

CITY COUNCIL MEETING AGENDA

REMOTE
April 26, 2021
CIP Meeting
7:00 PM

City Council Meeting
7:30 PM

Zoom Details

Please click the link below to join the webinar for both meetings:

<https://us02web.zoom.us/j/81347304503>

Or One tap mobile :

US: +13126266799 Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 312 626 6799 Webinar ID: 813 4730 4503

International numbers available: <https://us02web.zoom.us/u/kb8vROW3Ph>

1. **CALL TO ORDER**
2. **LATE FILE: COMMITTEE ITEMS**
 - COMM240_04_27_2020 Memo re: SOI Submission Info
 - COMM293_02_08_2021 Ltr. From Jane Snow
3. **PUBLIC COMMENT**
4. **MAYOR'S COMMENT**

CONSENT
AGENDA

NOTE: ALL ITEMS LISTED UNDER CONSENT AGENDA WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED SEPARATELY.

5. **APPROVAL OF MINUTES**
 - April 12, 2021 (Approve)
6. **COMMUNICATIONS**
 - COMM320_04_26_2021 Newburyport Retirement Board COLA notice (R&F)
 - COMM321_04_26_2021 Newburyport Water Resource Protection District map (R&F)
117 Indian Hill St property
 - COMM322_04_26_2021 Appraisal Report 117 Indian Hill St (R&F)
 - COMM323_04_26_2021 117 Indian Hill St - outlet stream photo and aerial photo (R&F)
 - COMM324_04_26_2021 Cover Ltr DeRosa Environmental (R&F)
7. **TRANSFERS**
 - TRAN095_04_26_2021 DPS Recpts Res for Approp \$35K to Highway Fuel & Oil \$35K (B&F)

8. APPOINTMENTS

- APPT241_04_26_2021 Bonnie Sontag 21 Smith St. Fruit St. Hist. Comm 5/31/2024

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA:

END OF CONSENT AGENDA

Budget & Finance

- TRAN090 04 12 2021 Water Retained Earnings \$155K to Watershed Land Acquisition \$155K with supporting documents
- TRAN091 04 12 2021 HWY Streetlights \$2,646 to Essex North Shore Tech School \$2,646
- TRAN092 04 12 2021 Overlay Surplus Account \$99,010 to ASR Revaluation \$99,010
- TRAN093 04 12 2021 GEN EVENT COORDINATOR \$4K to AUD MISC SUPPLIES \$500 and to GEN SUPPLIES-OFFICE \$3,500
- TRAN094 04 12 2021 RRFA-Paid Parking Fund \$5,550 to PKG Part Time Enforcement Officer \$4,500 and to PKG Clothing allowance \$1,050
- ORDR243 04 12 2021 FONT Gift Acceptance with supporting letter

Public Utilities

- APPT240 04 12 2021 William Creelman 129 Merrimac St Water/Sew 4/30/2023

REGULAR AGENDA

9. QUESTIONS AND ANSWERS – CITY SOLICITOR – Department Head Contracts

10. MAYOR'S UPDATE

11. COMMUNICATIONS

12. FIRST READING APPOINTMENTS

13. SECOND READING APPOINTMENTS

- APPT239_04_12_2021 Kevin Hunt 14 Tenth St. Veterans Agt. 4/1/2022

14. ORDERS

- ORDR244_04_26_2021 Charter Amendment Home Rule Petition
- ORDR245_04_26_2021 Municipal Aggregation Order

15. ORDINANCES

- ODNC068_01_27_2021 Late File Zoning Amend Sec VI-C re: # of residential structures per lot (As Amended) 2nd Reading
- ODNC072_03_29_2021 Parks COVID extend 2nd Reading
- ODNC075_04_26_2021 Safety Zone Designation Merrimac St.

16. COMMITTEE ITEMS

Ad Hoc Committee on Economic Development

In Committee:

- COMM262_08_31_2020 Gasbarro Ltr re: Awareness

Ad Hoc Committee on Market Landing Park and COTW

In Committee:

- COMM261_08_31_2020 Proposed Timeline, Waterfront
- ORDR227_12_14_2020 Appropriate NRA funds for RFP award

Budget & Finance

In Committee:

- COMM311_03_08_2021 Cllr Tontar letter re: KP Law Legal Opinion on Council Salaries
- COMM314_03_29_2021 FY2022-FY2026 Capital Improvement Program Submission (COTW)
- COMM319_04_12_2021 Memo to Council from Councillor Zeid re: CIP
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- **ORDR243 04 12 2021 FONT Gift Acceptance with supporting letter**
- ODNC074_04_12_2021 Council Salaries with Supporting Memo

Education

In Committee:

- COMM240_04_27_2020 Memo re: SOI Submission Info
- COMM273_10_13_2020 Ltr of Non-Support from Mayor on Acts of 1987
- COMM293_02_08_2021 Ltr. From Jane Snow

General Government

In Committee:

License & Permits

In Committee:

- ODNC047_01_27_2020 General Ordinance - Short Term Rental Units Rules
- COMM229_02_24_2020 Ltr re: Implementation of Short-Term Rental Ordinance
- APPL022_03_08_2021 Banter Barber & Clothier-Pool Table App.
- APPL024_03_29_2021 Plum Island Classic Cars

Neighborhoods & City Services

In Committee:

- COMM234_03_30_2020 Ltr from Newburyport Livable Streets March 11, 2020

- COMM285_01_27_2021 Memorandum from Councillor Christine Wallace
- COMM299_02_08_2021 LATE FILE Phillips Dr. Neighborhood Committee Ltr.

Planning & Development

In Committee:

- COMM215_01_13_2020 Ltr re: Colby Farm Open Space Beautification
- ODNC046_01_27_2020 Zoning Amendment - Short Term Rental Units Definition
- COMM231_03_09_2020 Ltr re: Short-Term Rental Ordinance
- ORDR196_07_13_2020 Open Space and Recreation Plan 2020 (COTW)
- ODNC073_03_29_2021 Late File Zoning Amendment Storage Warehousing=

Public Safety

In Committee:

- COMM216_01_13_2020 Ltr re: Ban the Use of Glyphosate
- APPT165_04_13_2020 Dr. Robin Blair 18 Market St. Board of Health 4/30/2023
- COMM243_05_11_2020 Ltr from Jane Rascal re: NMMCD
- ORDR200_07_30_2020 List of Crosswalks Amended
- COMM282_01_27_2021 Ltr from Jim McCarthy re: Sign Proposal
- COMM283_01_27_2021 Ltr from Jim McCarthy-speed limit
- APPL023_03_08_2021 LATE FILE Event App The Moving Wall

Public Utilities

In Committee:

- COMM290_02_08_2021 Falmouth Broadband Feasibility Study (full text in Clerk's office)
- COMM292_02_08_2021 Memo - Electricity Aggregation Program
- COMM295_02_08_2021 Best Best & Krieger Small Cells Order Annual Meeting
- COMM296_02_08_2021 Natoa FCC Small Wireless Facilities Rules Compliance Guide
- APPT240_04_12_2021 William Creelman 129 Merrimac St Water/Sew 4/30/2023

Rules

In Committee:

- COMM220_01_27_2020 Proposed City Council Rule 9F
- ORDR170_02_24_2020 Amendment Council Rules 2020 (COTW)
- ORDR171_02_24_2020 Amendment to Rule 17B (COTW)
- ORDR239_02_8_2021 Council Rule 7 and 10B

17. GOOD OF THE ORDER

18. ADJOURNMENT



CITY OF NEWBURYPORT

MASSACHUSETTS

CITY CLERK'S OFFICE

NEWBURYPORT CITY HALL

60 PLEASANT STREET • P.O. BOX 550

NEWBURYPORT, MA 01950

TEL: 978-465-4407 • FAX: 978-462-7936

RICHARD B. JONES

CITY CLERK

REMOTE Public Hearing conducted by the Newburyport City Council at 7:00 pm on April 26, 2021 relating to the Capital Improvement Program.

There is a full copy of the Capital Improvement Program available for inspection online at <https://www.cityofnewburyport.com/fy21-25cip>

Zoom details are as follows:

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/81347304503>

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US: +1 312 626 6799 or +1 929 205 6099

Webinar ID: 813 4730 4503

CONSENT AGENDA

CITY COUNCIL MEETING MINUTES

REMOTE

April 12, 2021

7:30PM

City Council Meeting

Zoom Details

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/86493680558>

Or One tap mobile :

US: +13126266799 Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 312 626 6799 Webinar ID: 864 9368 0558

1. **CALL TO ORDER** The City Council Pro Tempore President, Barry Connell called the meeting to order at 7:30 pm and asked the City Clerk, Richard B. Jones to call the roll. The following Councillors answered present, Shand, Tontar, Vogel, Wallace, Zeid, Devlin, Khan, Lane, McCauley, and Connell. 10 present, 1 absent(JE), using Zoom as a platform.
2. **LATE FILE ITEMS**
3. **PUBLIC COMMENT**
Connie Preston, 18 Atwood Street
Jane Snow, 9 Coffin Street
Jennie Donahue, 18 Cherry Street
4. **MAYOR'S COMMENT**

**CONSENT
AGENDA**

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5. **APPROVAL OF MINUTES**
 - March 29, 2021 (Approve)
6. **COMMUNICATIONS**
 - COMM318_04_12_2021 Ltr from Mackin re: IFS Zoning Issue (R&F)
 - COMM319_04_12_2021 Memo to Council from Councillor Zeid re: CIP (B&F)
7. **TRANSFERS**
 - TRAN090_04_12_2021 Water Retained Earnings \$155K to Watershed Land Acquisition \$155K with supporting documents (B&F)
 - TRAN091_04_12_2021 HWY Streetlights \$2,646 to Essex North Shore Tech School \$2,646 (B&F)
 - TRAN092_04_12_2021 Overlay Surplus Account \$99,010 to ASR Revaluation \$99,010 (B&F)
 - TRAN093_04_12_2021 GEN EVENT COORDINATOR \$4K to AUD MISC SUPPLIES \$500 and to GEN SUPPLIES-OFFICE \$3,500 (B&F)
 - TRAN094_04_12_2021 RRFA-Paid Parking Fund \$5,550 to PKG Part Time Enforcement Officer \$4,500 and to PKG Clothing allowance \$1,050 (B&F)

8. APPOINTMENTS

- APPT239_04_12_2021 Kevin Hunt 14 Tenth St. Veterans Agt. 4/1/2022
- APPT240_04_12_2021 William G. Creelman 129 Merrimac St. Water/Sewer Comm. 4/30/2023

Removed from Consent Agenda at the request of Councillor Tontar.

ALL ITEMS NOTED BELOW ARE REMOVED FROM THEIR RESPECTIVE COMMITTEES WITH THE MOTION TO APPROVE THE CONSENT AGENDA:

Motion to approve the Consent Agenda as amended by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 10 yes 1 absent (JE). Motion passes.

**END OF CONSENT AGENDA
REGULAR AGENDA**

9. MAYOR'S UPDATE

Motion to receive and file by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

10. PRESENTATION ON RESIDENTIAL ELECTRICAL AGGREGATION, Michael Strauss, Ph.D,

11. COMMUNICATIONS – None

12. FIRST READING APPOINTMENTS

- APPT240_04_12_2021 William G. Creelman 129 Merrimac St. Water/Sewer Comm. 4/30/2023

Motion to refer to Public Utilities by Councillor Tontar, seconded by Councillor Shand. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

13. SECOND READING APPOINTMENTS

- APPT236_03_29_2021 Michael Nary 20 Riverview Dr. Sp.Police Ofc.
- APPT237_03_29_2021 Rich Traister 325 Merrimac St. Disabilities Comm. 3/31/2024
- APPT238_03_29_2021 Walter Lesynski 364 Merrimac St. Harbor Comm. 4/1/2024

Motion to approve collectively by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

14. ORDERS

- ORDR243_04_12_2021 FONT Gift Acceptance with supporting letter

Motion to refer to Budget & Finance by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

15. ORDINANCES

- ODNC072_03_29_2021 Parks COVID extend 1st Reading

(continued from March 29, 2021) Motion to approve 1st reading by Councillor Zeid, seconded by Councillor Devlin pending.

Motion to approve 1st reading by Councillor Zeid, seconded by Councillor Devlin. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

- ODNC074_04_12_2021 Council Salaries with Supporting Memo

Motion to refer to Budget & Finance by Councillor Tontar, seconded by Councillor Khan. Roll call vote. 9 yes, 1 no (SZ), 1 absent (JE). Motion passes.

- ODNC068_01_27_2021 Late File Zoning Amend Sec VI-C re: # of residential structures per lot (As Amended)

(Continued from March 29, 2021) Motion to amend Sec VI-C (2)a.iv.(f) to \$40 per square foot by Councillor McCauley, seconded by Councillor Lane pending.

Motion withdrawn by Councillors McCauley and Lane. Motion to amend Sec VI-C (2)a.iv.(f) to \$20 per square foot by Councillor McCauley, seconded by Councillor Shand. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

Motion to approve amended 1st reading by Councillor McCauley, seconded by Councillor Lane. Roll call vote. 9 yes, 1 no (SZ), 1 absent (JE). Motion passes.

16. COMMITTEE ITEMS

Ad Hoc Committee on Economic Development

In Committee:

- COMM262_08_31_2020 Gasbarro Ltr re: Awareness

Ad Hoc Committee on Market Landing Park and COTW

In Committee:

- COMM261_08_31_2020 Proposed Timeline, Waterfront
- ORDR227_12_14_2020 Appropriate NRA funds for RFP award

Council Connell asked Andy Port, Director of Planning, to give a brief update on the Park Expansion project. Andy Port explained that Sasaki Associates are reviewing the overall design of the park expansion including the bike path and boat access points.

Budget & Finance

In Committee:

- COMM311_03_08_2021 Cllr Tontar letter re: KP Law Legal Opinion on Council Salaries
- COMM314_03_29_2021 FY2022-FY2026 Capital Improvement Program Submission (COTW)

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- COMM293_02_08_2021 Ltr. From Jane Snow

General Government

In Committee:

License & Permits

In Committee:

- ODNC047_01_27_2020 General Ordinance - Short Term Rental Units Rules
- ODNC067_01_27_2021 License to Occupy Outdoor Property Ch. 12-1
- COMM229_02_24_2020 Ltr re: Implementation of Short-Term Rental Ordinance
- APPL022_03_08_2021 Banter Barber & Clothier-Pool Table App.
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- ORDR171_02_24_2020 Amendment to Rule 17B (COTW)
- ORDR239_02_8_2021 Council Rule 7 and 10B

17. GOOD OF THE ORDER

Councillor Zeid – Thursday, 6pm CIP meeting (DPS).

Councillor Khan – Ordinance Review Wednesday at 6:30pm

Councillor Connell – Vaccination clinic was professional and cheerful.

18. ADJOURNMENT

Motion to adjourn at 8:53pm by Coucnillor Zeid, seconded by Councillor Khan. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

COMMUNICATIONS

*Newburyport Retirement Board
16 Unicorn Street
Newburyport, MA 01950*

Board Members

*Joseph Spaulding, Chairman
Jeffrey Cutter, Vice-Chairman
Alexander Kravchuk, Board Appointee
Ethan Manning, City Auditor
John Moak, Mayor Appointee*

*Laurie Burton, Executive Director
LaurieBurton@NewburyportRetirement.org
Telephone
(978) 465-6619
FAX
(978) 462-4042*

April 12, 2021

City Council President Jared Eigerman
City Councilors
City Hall, 60 Pleasant Street
Newburyport, MA 01950

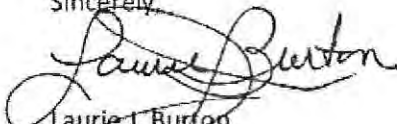
Re: Retirement Board Meeting for the Purpose of Voting on COLA for Retirees

Council President and Members of the City Council:

Per the provisions of Section 51 of Chapter 127 of the Acts of 1999, we are hereby notifying you that the Newburyport Retirement Board will be holding a ZOOM meeting on Thursday, May 27, 2021 at 9:00 A.M..

At this meeting the Retirement Board will address the election of paying a COLA of up to 3% to the Retirees for FY 2022, pursuant to Chapter 32, Section 103 and Chapter 127, Section 51 of the Acts of 1999.

Sincerely,


Laurie J. Burton
Executive Director

ZOOM - Meeting ID: 725 756 3329

Water Resource Protection District City of Newburyport

Legend

- Town Boundary
- Watershed Features**
 - Lakes, Rivers
 - Reservoirs
 - Streams
 - Newburyport Municipal Wells
 - Community Public Water Supply - Surface Water
 - Community Public Water Supply (West Newbury)
 - Artichoke Watershed Boundary
- Zone A
- Zone B
- Zone C
- Zone I
- Zone II
- Bartlett Pond Watershed Boundary
- Bartlett Pond Zone A
- Bartlett Pond Zone B & C

Watershed Zones:

Zone A: (a) The land area between the surface water source and the upper boundary of the bank; (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05 (3) (a); and (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

Zone B: The land area within one-half mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05 (3) (a), or edge of the watershed, whichever is less. However, Zone B shall always include the land area within a 400 foot lateral distance from the upper boundary of the bank of the Class A surface water source.

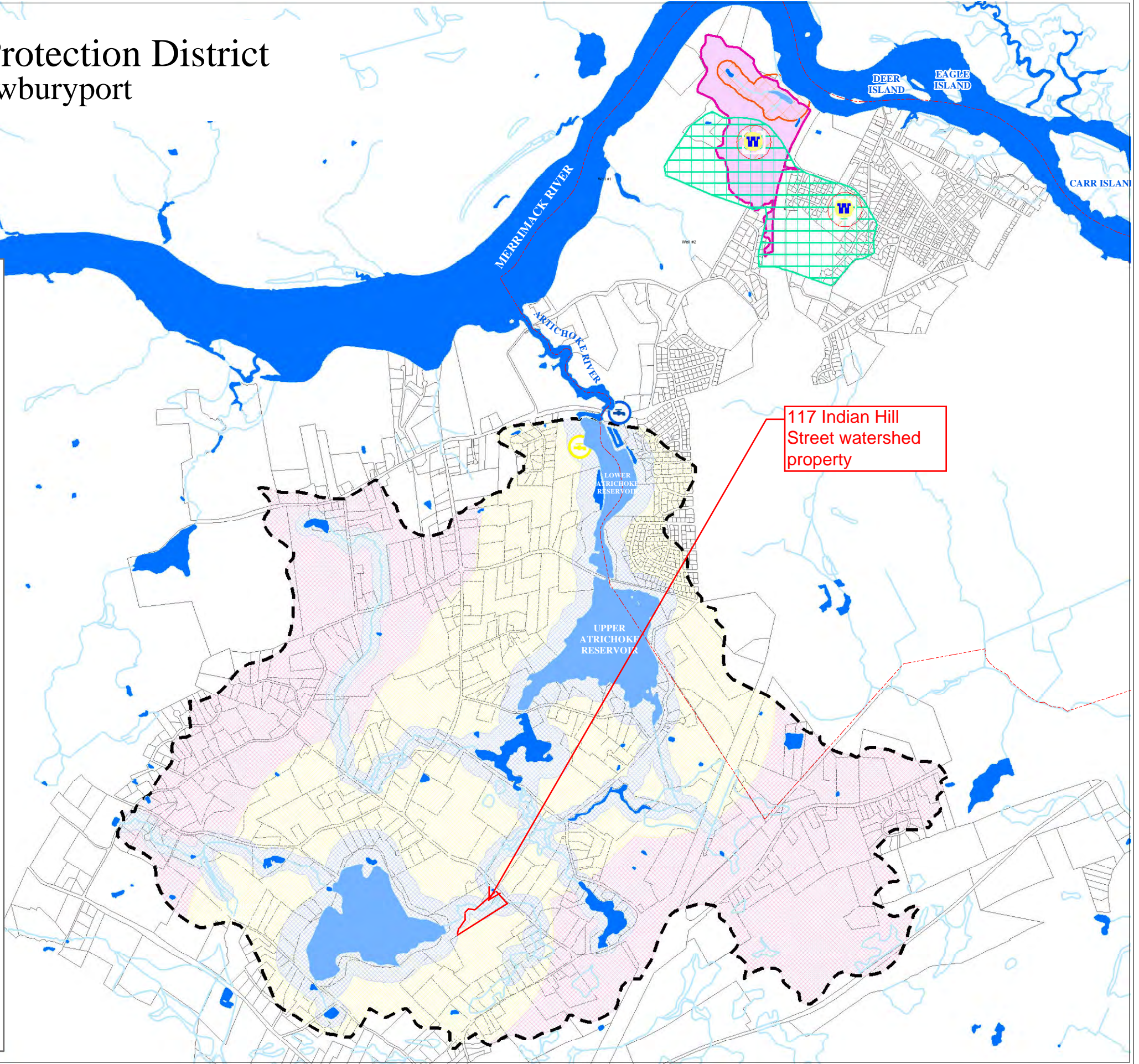
Zone C: The land area not designated as Zone A or Zone B within the watershed of a Class A water source as defined in 314 CMR 4.05 (3) (a).

Zone I: The zone encompassing the land area which falls within a 400-foot radius from the municipal well shaft.

Zone II: The area of an aquifer which contributes water to a municipal well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 CMR 22.00. This area shall be considered to be a 1/2-mile radius from the well shaft until such time that the Zone II has been delineated by an approved hydrologist.

DATA SOURCES:
The Bartlett Pond watershed data was supplied by the Merrimack Valley Planning Commission. Property parcels were digitized from municipal Assessors maps (1"=200' scale). All other hydrography data for this map was supplied by the Executive Office of Environmental Affairs and MassGIS.

DISCLAIMER
Data and information is provided by the GIS system, with the understanding that it is not guaranteed to be correct or complete. All data is subject to change and periodic updates. The City of Newburyport makes no claims, representations or warranties, express or implied, concerning the validity, reliability or the accuracy of the GIS data and GIS data products furnished by the City, specifically including the implied or expressed validity of any uses of such data.



117 Indian Hill Street watershed property

RESTRICTED APPRAISAL REPORT

Date: March 15, 2021

To: Maggie Brown, Project Manager, Essex County Greenbelt Association and the City of Newburyport, Massachusetts (“Clients”)

From: James Monahan, Senior Advisor, LandVest, Inc. (MA C.G. #3481)

Re: Appraisal Report – 6.1± acres of Residentially-Zoned Vacant Land at 117 Indian Hill Road, Town of West Newbury, Essex County, Massachusetts

Attachments: Appraiser Certification, Deed & Legal Description, Orders of Condition & Plans, Assessor’s Card

This *Restricted Appraisal Report* is intended to summarize my opinions and conclusions regarding the current market value of a residentially-zoned, vacant land tract located at 117 Indian Hill Road in the Town of West Newbury, Massachusetts (hereinafter referenced as the “subject property”).

The intended use of this USPAP-Compliant Restricted Appraisal Report is limited to the above-cited Clients. The rationale for how the appraiser arrived at the opinions and conclusions set forth in this report may not be fully understood without additional detailed information that is retained in the appraiser’s work-file.

1. PROPERTY IDENTIFICATION AND APPRAISAL SCOPE

Subject Property:

The following table summarizes the subject property and its 2021 property tax assessment according to Town of West Newbury Assessor’s records.

Address	Map/Lot	Area	Assessed Value (Land)	Assessed Value (Buildings)	Assessed Value (Extras)	Total Assessed Value
117 Indian Hill Rd.	18-9C	6.1± ac.	\$265,200	\$0	\$0	\$265,200

Based on the F.Y. 2021 mil rate of \$14.88/\$1,000, the annual tax load amounts to approximately \$3,946. It is noted that the subject property is not currently enrolled in MGL Chapter 61 and no penalties are assessable upon transfer or conversion of use.

- Legal Description:** Essex County Registry of Deeds Book 37769, Page 382, dated August 20, 2019 – see copy in *Appendix*.
- Client:** Maggie Brown, Project Manager, Essex County Greenbelt Association, Inc. and Authorized Representatives of the City of Newburyport, Massachusetts
- Intended Use:** Acquisition planning
- Intended Users:** Authorized Representatives of the Essex County Greenbelt Association, Inc., and the City of Newburyport, Massachusetts
- Effective Date of Valuation:** March 9, 2021 (Inspection Date)
- Property Rights Appraised:** Fee Simple interest

Type of Value:

The opinion of value estimate set forth herein is **Market Value**, the major focus of most real property appraisal assignments. For the purposes of this appraisal, the definition of Market Value aligns with the definition outlined in Treasury Regulation 1.170A-1 (c)(2):

- *“The Fair Market Value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.”*

USPAP also requires that certain items be included in every appraisal report. Among these items, the following are directly related to the definition of market value:

- *Identification of the specific property rights to be appraised.*
- *Statement of the effective date of the value opinion.*
- *Specification as to whether cash, terms equivalent to cash, or other precisely described financing terms are assumed as the basis of the appraisal.*

If the appraisal is conditioned upon financing or other terms, specification as to whether the financing or terms are at, below, or above market interest rates and/or contain unusual conditions or incentives. The terms of above-or below-market interest rates and/or other special incentives must be clearly set forth; their contribution to, or negative influence on, value must be described and estimated; and the market data supporting the opinion of value must be described and explained.

To conclude the highest and best use of the Property we have evaluated, in the sequence shown below, four criteria, paying particular attention to the emphasized phrase above:

1. **Legally permissible** uses result from such limitations as those imposed by private deed restrictions, zoning, building codes and environmental regulations.
2. **Physically possible** uses were considered in terms of the size, shape, land area and topography. Also considered were the availability of public utilities and age, condition and functional utility of the improvements.
3. **Financially feasible** uses were those uses that meet the conditions imposed by the two previous criteria and which may be expected to produce a positive financial return.
4. **Maximally productive** use is that use which will provide the highest rate of return or value to the land.

Scope of Work:

On-site property inspection with Clients; review of publicly-available records; review of pertinent legal documents; land use/regulatory review; site planning review; approval history review; summary highest and best use analysis; valuation via Sales Comparison (appraisal) Approach. This Restricted Appraisal Report is prepared and delivered in accordance with the Uniform Standards of Professional Appraisal Practice (*USPAP 2020-2021 Edition*).

Extraordinary Assumptions:

- It is assumed that the subject property is free and clear of any hazardous conditions, including but not limited to soil contamination and subsurface fuel storage.
- It is further assumed that the subject property is in full compliance with all applicable zoning and environmental regulations.
- The highest and best use conclusion outlined in this report is based on an extraordinary assumption that a previously-approved and now lapsed Order of Conditions stipulating mitigating measures to be completed in the construction of driveway access to the buildable upland portion of the subject site could be re-approved/re-extended in accordance with the original design plans.

Hypothetical Conditions:

- No hypothetical Conditions were assumed in the completion of this assignment.

Sale and Listing History:

The subject property was not offered publicly on the open market as of the effective valuation date. It most recently sold (to the current owner) on 8/20/19 following open market exposure and the prior sale was in 2013.

2. TITLE:

The subject property was conveyed most recently on 8/20/19 from Sandra Roulier, Successor Trustee of the Flying W Realty Trust to John J. O'Connor (see Essex B. 37769, P. 382 – copy in

Appendix). Consideration reflected in the deed was \$150,000. The subject property is referenced as Lot 2 on a plan of land entitled “*Subdivision of Land Prepared for Flying W Realty Trust, Sandra Roulier, Trustee*”, 111 Indian Hill Street, prepared by Reid Surveyors, Lynn, Massachusetts, dated March 26, 2014. The plan is recorded at Plan Book 444 as Plan #20 (Essex County Plan Room). The legal description includes no mention of easements or encumbrances. The acreage reflected on the plan if record is 264,821 square feet (6.1± acres).

3. PROPERTY DESCRIPTION:

The locus, current configuration and existing condition of the subject property is depicted on a scaled, GIS-format compiled plan entitled **Base Plan** on the following page of this report. This plan incorporate the property’s surveyed boundaries superimposed on a 2019 aerial ortho-photo of the property, including the immediate neighborhood context.

The subject property is generally located on the southerly side of Indian Hill Street in the southeastern section of the Town of West Newbury – roughly ¾ miles to the west of Interstate 95 at Exit 56. Indian Hill Street is a public collector road in West Newbury. There are no curbs, sidewalks or municipal utilities and local properties rely on private wells and septic systems. Overhead utilities are located along road frontage.



Northeasterly view along Indian Hill Road frontage.



Typical interior wooded upland view.







The property assumes a highly irregular configuration with a maximum depth of roughly 1,310+ feet and a lot width ranging from 110± feet to 310± feet. The total contiguous road frontage (per the survey plan) amounts to 293.75± feet. There are no established access roads and curb cut entry options along the road frontage are limited due to wetlands, topography and sight distance. The site is moderately wooded in mixed hardwoods (red oak and black locust) and evergreen woodlands and the understory is relatively light. The topography consists of a range of small hills and promontories and areas of what appear to be previously-disturbed/graded soils.

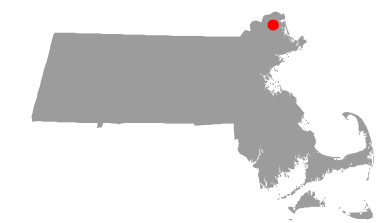
Greenbelt - Indian Hill Street

West Newbury, MA

Base Plan Orthophotograph

LEGEND

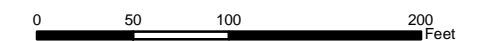
-  Subject Property - 6.1 ±Ac
-  Adjacent Properties
-  Wetlands
-  Perennial Streams
-  Intermittent Streams
-  Contours (ft)



Notes:
Credits: 2020 Imagery from
Nearmap Imagery
map service.

Date: 03/08/21

Project Number: MA3316-CG

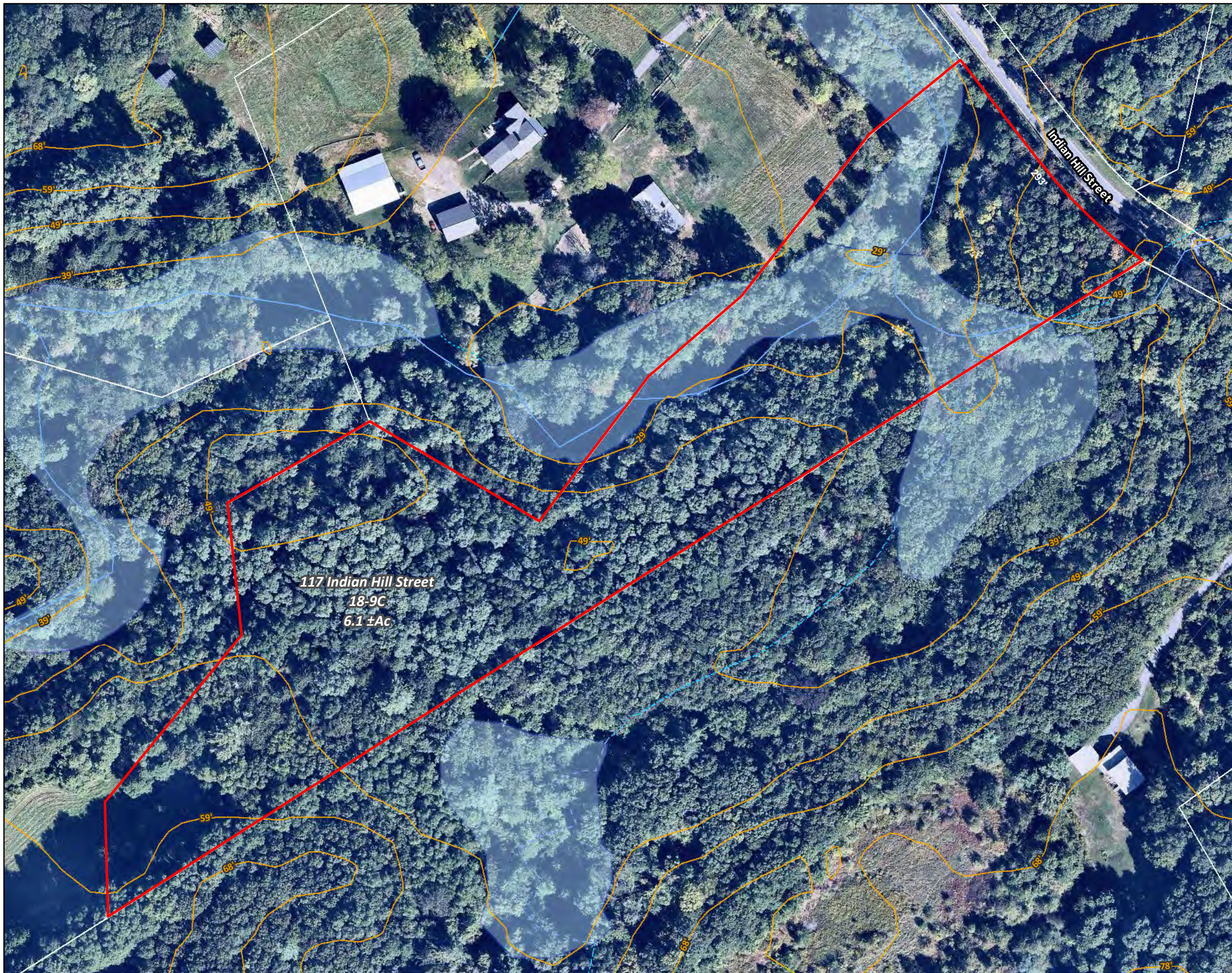


Scale: 1" = 100'



This plan is conceptual only and is not
represented as an engineered plan.

LandVest



Elevations along the road frontage range from about 26-46 feet and overall on-site elevations range from 25± feet in easterly wetlands to 68± feet in the extreme southwesterly tip of the property.

On site wetlands delineations and detailed topographic surveys were completed as part of previous permitting.

The northeastern portion of the property includes a broad network of perennial streams and associated freshwater wetlands that traverse the width of the site. A significant wetland crossing (involving two branches of a perennial-flow stream) is required to access the rear interior upland portion of the property (see photo below).



The engineering plans accompanying the Notice of Intent/Order of Conditions call for the use of an 18' open-bottom box culvert to traverse this stream with a new entry driveway. The plans call for Riverfront impacts of 23,525 s.f.; flood storage loss of 1,777 c.f with 2,580 s.f. in compensatory storage; and, the filling of approximately 1,350 s.f. of freshwater wetland with 2,025 s.f. of replicated wetlands.

The proposed entry driveway spans some 900+ feet and provides access to the most suitable building site atop a wooded knoll at an elevation of approximately 50 feet. This portion of the site offers attractive southwesterly views to adjacent conservation land and the setting is quite private.

4. HIGHEST AND BEST USE ANALYSIS

The following analysis of Highest and Best Use involves consideration of existing land use regulations, any *reasonably probable* modifications to those regulations, the subject property's physical characteristics, and economic demand for the physically and legally permissible uses of

the subject property type. This analysis also accounts for prevailing market trends, established neighborhood development patterns, and aesthetic issues impacting market demand.

In consideration of significant wetland constrains, the highest and best use of the subject property is illustrated on a set of plans (revised through 7/26/16) accompanying an original Order of Conditions (DEP File #78-658) calling for development of the subject property as a single residential building lot of 6.1± acres. It is noted that the original Order of Conditions from the West Newbury Conservation Commission issued on August 11, 2016 expired on August 11, 2019. The Order was then extended on May 6, 2019 until August 11, 2020. It has since expired and it is a special assumption of this appraisal that the now expired Order of Conditions could be extended subject to the same set of performance conditions.

This is a fairly significant extraordinary assumption in terms of its bearing on the subject property's market value. If these previous approvals cannot be feasibly extended, the property's highest and best use would be reduced to limited-utility/accessory acreage.

However, in consideration of the property's detailed level of on-site engineering and approval history, there is a reasonable basis for the reliance of this extraordinary assumption.

Assuming development as a single residential building lot, the valuation will first consider the property's value at a "retail" or finished level and then all costs required to extend driveway access and complete all necessary wetland replication in compliance with an extended Order of Conditions – will be estimated and deducted from the retail level value to yield the property's "as is" value as of the effective valuation date.

Valuation Approaches Developed:

The Sales Comparison Approach was employed as the primary appraisal methodology in the valuation of the subject property. The Cost Approach is not applicable as the property is vacant and the Income Capitalization Approach is not applicable as the market for the subject property type is not driven by non-resident investors.

5. VALUATION

Sales Comparison Approach – Comparable Sales Overview

The Market Approach or Sales Comparison Approach is a method whereby recent sales of comparable properties are analyzed and compared to the subject property by making adjustments for perceived differences. The market approach is based on the theory of exchange, which implies that a comparison of similar properties has been made by the potential purchaser, and that the purchaser would not pay more than the cost of acquiring a property with the same utility.

Whenever there is a sufficient quantity of recent comparable sales in the local market, the *Sales Comparison Approach* is the most reliable and preferred valuation method. In researching the subject market for appropriate sales, I was able to gather a sufficient number of comparable transactions in order to justify a well-supported valuation of the subject property in accordance with the previously-described highest and best use conclusion.

a. Comparable Sales Overview

In the course of this valuation, I conducted a search for closed, arm’s length sales involving fully-approved, vacant, residential building lots in both West Newbury and reasonably proximate North Shore residential markets. My market survey focused primarily on larger lots of 3-10 acres with additional emphasis on lots requiring above average buyer-borne access and utility costs.

The following table provides a general overview of recently-closed sales involving similarly-sized vacant residential building lots in West Newbury and competing markets from 2018 - present.

Residential Lot Sales Overview – W. Newbury and Proximate Markets

Sale	Location	Sale Date	Sale Price	Acreage	\$/Acre	Comments
L1	Bachelor St. W. Newbury	4/25/18	\$194,000	6.26	\$30,990	Infill lot with 400 feet of road frontage, approved septic design and Order of Conditions. Sold for just under asking price of \$199,000. 397 days on market prior to sale.
L2	8A Crane Neck St. W. Newbury	5/4/18	\$248,000	5.59	\$44,364	Infill lot on dead end road in very scenic setting. Abuts conservation land. Approved 3 BR perc. Excellent view potential but limited lot utility. Listed at \$275,000. 757 days on market prior to sale.
L3	58 Ash St., W. Newbury	5/5/20	\$282,000	3.51	\$80,341	Infill lot in excellent market location in W. Newbury. Included approved 4BR septic plan and seller had completed \$25K in clearing and site work prior to sale. Listed at \$289,900 and sold after just 4 days.
L4	409 Middle St., W. Newbury	8/16/19	\$285,000	3	\$95,000	This is a corner lot on Middle Street. The mostly level lot is seasonally protected by a wooded border along the two lengths of road frontage but on-site privacy is only average, given the lot’s size. The interior was cleared and a driveway was roughed in. Septic plan sold with property. Lot was listed at \$295,000 and sold after 493 days on market.

Sale	Location	Sale Date	Sale Price	Acreage	\$/Acre	Comments
L5	61 Elm Street, Newbury	3/4/21	\$330,000	7.18	\$45,961	Densely wooded road-front lot is located between Governors Academy and Triton Regional H.S. Southerly slopes with building area roughly 400 feet in from road frontage. Excellent location but high site costs. Lot was listed for over 4 years prior to sale.
L6	25 Larch Row, Wenham	12/31/19	\$365,000	4.37	\$83,524	Infill lot in very attractive market setting on Larch Row near town center. Mostly wooded lot with extensive wetlands and Rivers Act jurisdiction. Approved perc test for 6BR septic. Sale price in this prime market location reflects high costs to build long access drive and extend utilities (costs assumed by buyer). Listed at \$395,000 and sold after 398 days on market.
Indicated Averages:			\$237,000	4.98	\$47,530	

It is noted that in addition to the 6 above-outlined closed sales, the listing and sale history of the subject property was also considered and analyzed. The subject property was originally listed on 11/1/16 at \$295,000. Over the next three years it went through a series of extensions and expirations and was then re-listed on 5/13/19 at an asking price of \$195,000. It sold approximately 3 months later for \$150,000 (\$24,590/acre). This listing history and final sale price is considered valid data as the property saw extensive open market exposure over a 963 day listing period prior to a negotiated sale.

I have also considered the fact that as of the effective valuation date, *MLS* records indicated that there were *no actively-listed residential building lots on the market in the entire Town of West Newbury*.

Based on my review of the above-outlined sales and consideration of the subject property’s sale history, it is my opinion that the “as is” market value of the subject property as of March 9, 2021, subject to the extraordinary assumptions outlined earlier, was as follows:

\$165,000

(ONE HUNDRED SIXTY FIVE THOUSAND DOLLARS)

It is noted that the above-outlined market value opinion is based on an estimated “retail” market value of \$295,000 less an estimated \$130,000 in extraordinary site costs.

Estimated Exposure Time

USPAP requires that an appraisal include an estimate of exposure time, which is the estimated length of time that the property interest being appraised would have been offered to the market prior to the hypothetical consummation of a sale at the concluded market value as of the effective valuation date.

Given the complete lack of competing lot inventory as of the effective valuation date, the subject property would likely garner above-average market attention by private buyers seeking a large acreage residential construction opportunity in an established conservation setting in the West Newbury market. If offered on the open market at a list price within 10% of appraised value, I would expect an offer would be accepted and purchase and sale agreement would be signed within 1-4 months.

APPENDIX

Appraiser Certification

Pertinent Deeds and Legal Descriptions

Orders of Condition & Plan

Assessor's Card

CERTIFICATION OF VALUE

I hereby certify that:

1. I have made a personal inspection of the property that is the subject of this report.
2. To the best of my knowledge and belief, the statements of fact and the opinions contained in this report are true and correct.
3. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and my personal, unbiased professional analyses, opinions, and conclusions.
4. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
5. My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
6. This appraisal was not based on a requested minimum valuation, specific valuation or approval of a loan.
7. My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of The Appraisal Institute, as well as the Uniform Standards of Professional Appraisal Practice of the Appraisal Institute. I am currently licensed (in good standing) as a Certified General Appraiser in Massachusetts (CG #3481).
8. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
9. No one provided research assistance to the primary appraiser signing this report.
10. I have not appraised the subject property in the three years prior to the acceptance of this assignment.

Appraiser: James E. Monahan

Date: March 15, 2021



James E. Monahan

2



SO.ESSEX #297 Bk:37769 Pg:382
08/20/2019 01:22 PM DEED Pg 1/2
eRecorded

MASSACHUSETTS EXCISE TAX
Southern Essex District ROD
Date: 08/20/2019 01:22 PM
ID: 1310594 Doc# 20190820002970
Fee: \$684.00 Cons: \$150,000.00

QUITCLAIM DEED

I, Sandra Roulier, Successor Trustee of Flying W Realty Trust, u/d/t dated 12/2/96 and recorded with Essex South District Registry of Deeds at Book 13880 Page 3

For consideration of One Hundred Fifty Thousand Dollars (\$150,000.00) paid

Grant to John J. O'Connor of 100 Van Norden Road, Reading, MA

With Quitclaim Covenants

The land located in West Newbury, Essex County, Massachusetts, further described as follows;

The vacant lot numbered 2, on a plan of land entitled "Subdivision of Land prepared for Flying W Realty Trust, Sandra Roulier, Trustee, 111 Indian Hill Street, Parcel Id 0180-0000-0018 & 0019, Reid Land Surveyors, Lynn, Massachusetts, Dated March 26, 2014, scale- 1"=80', and recorded with Essex South District registry of Deeds at Plan Book 444 Plan20.

Said Lot 2 containing 6.1 acres more or less according to said plan.

Further reference may be had to said plan for a more particular description.

I, Sandra Roulier, Trustee, Grantor herein hereby state under the penalties of perjury that the property conveyed herein was not the owner occupied principal residence of the grantor Trust beneficiaries or the grantors' trust beneficiaries' spouse or former spouse.

Being a portion of the same premises conveyed to Grantor by deed recorded with said Registry of Deeds at Book 13880 Page 8.

Witness my hand and seal this 20th day of August 2019.

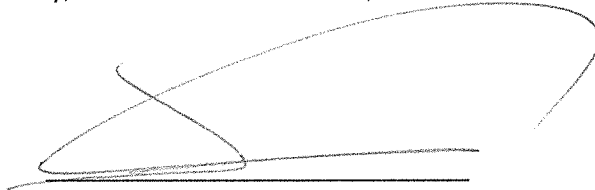

Sandra Roulier, Trustee

Address of Locus: Lot 2, 117 Indian Hill Street, West Newbury, Massachusetts

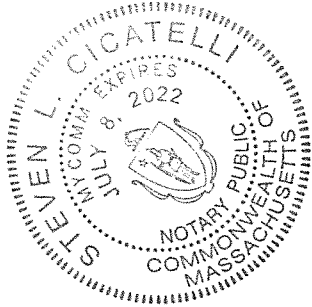
COMMONWEALTH OF MASSACHUSETTS

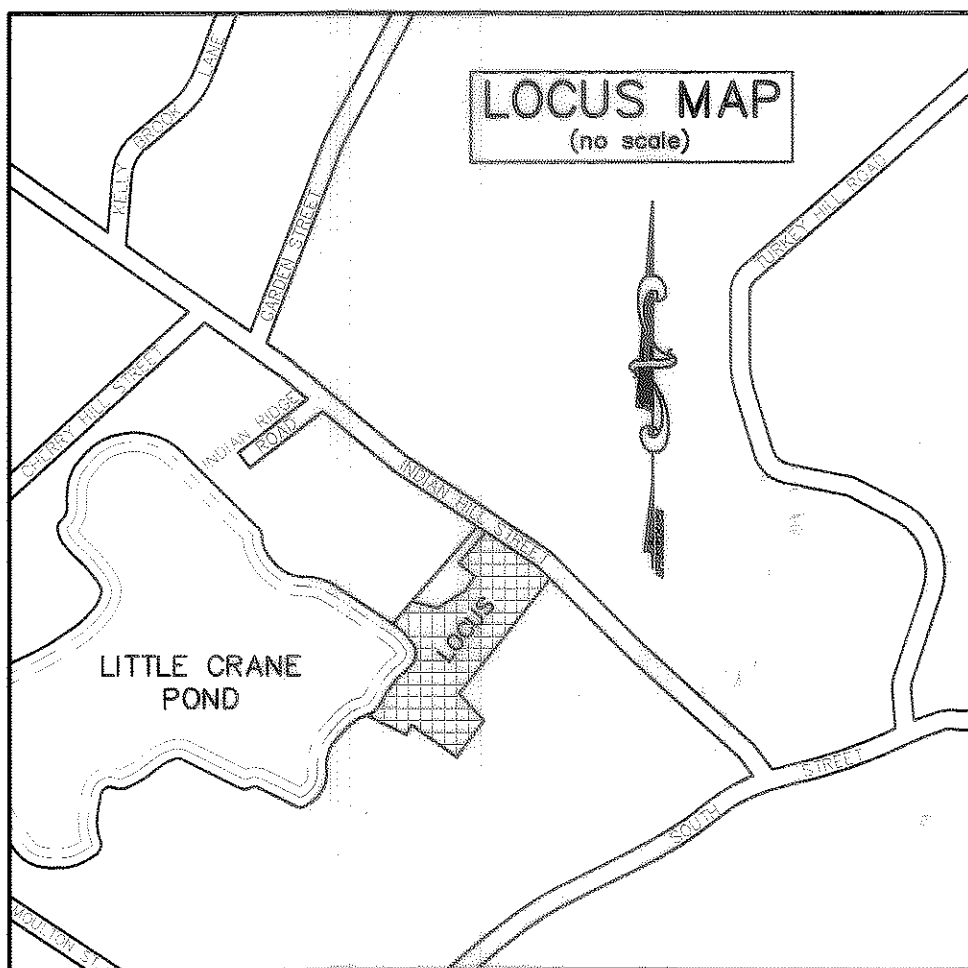
MIDDLESEX, ss

On this 20th day of August, 2019, before me, the undersigned Notary Public, personally appeared Sandra Roulter, Trustee proved to me through satisfactory evidence of identification, which was a state driver's license, to be the person) whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, as her free act and deed, as Trustee for its stated purpose.



Notary Public: Steven L. Cicatelli
My Commission Expires: 7/8/2022



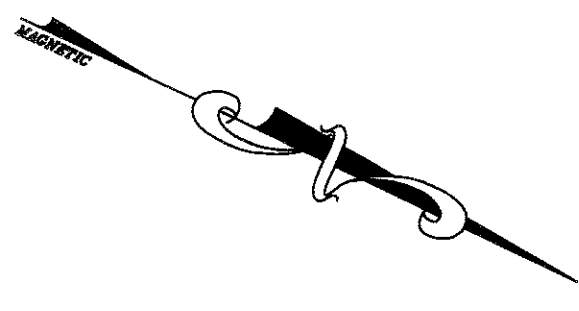


20
444

LINE	LENGTH	BEARING
L1	19.41'	S33°00'02"E
L2	14.70'	S50°28'24"E
L3	12.95'	S28°24'18"E
L4	16.73'	S33°59'33"E

PLAN BOOK 444 PLAN 20
ESSEX REGISTER OF DEEDS 30-D-18
 RECEIVED JULY 31 2014
 WILK
 REG. OF DEEDS
 REGISTER OF DEEDS

I CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS.



N/F
 JOHN C. & CAROL K. ELWELL
 PARCEL ID: 0060-0000-00180

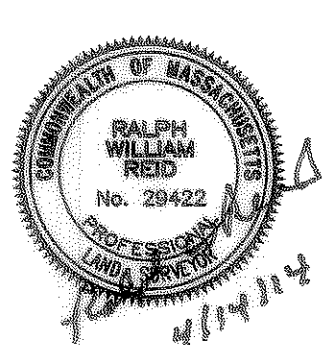
N/F
 ESSEX COUNTY GREEN BELT ASSOCIATION, INC.
 PARCEL ID: 0180-0000-0019B
 PLAN BOOK 303 PLAN 84

N/F
 ANNE B. & MARTIN C. MADDEN
 PARCEL ID: 0180-0000-00010

N/F
 CITY OF NEWBURYPORT
 INDIAN HILL RESERVOIR
 A/K/A LITTLE CRANE POND
 PLAN BOOK 149 PLAN 59

N/F
 ESSEX COUNTY GREENBELT ASSOC.
 PARCEL ID: 0170-0000-0001D

N/F
 JAMES L. CURRIER
 PARCEL ID: 0180-0000-00170
 PLAN BOOK 314 PLAN 67

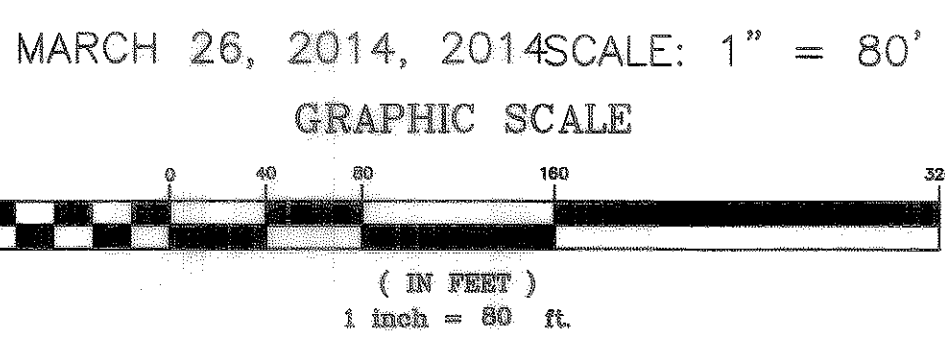
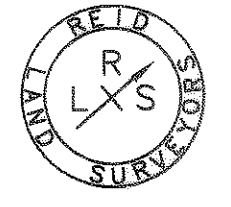


WEST NEWBURY PLANNING BOARD
 APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED.
 DATE: 05/06/2014
[Signatures]

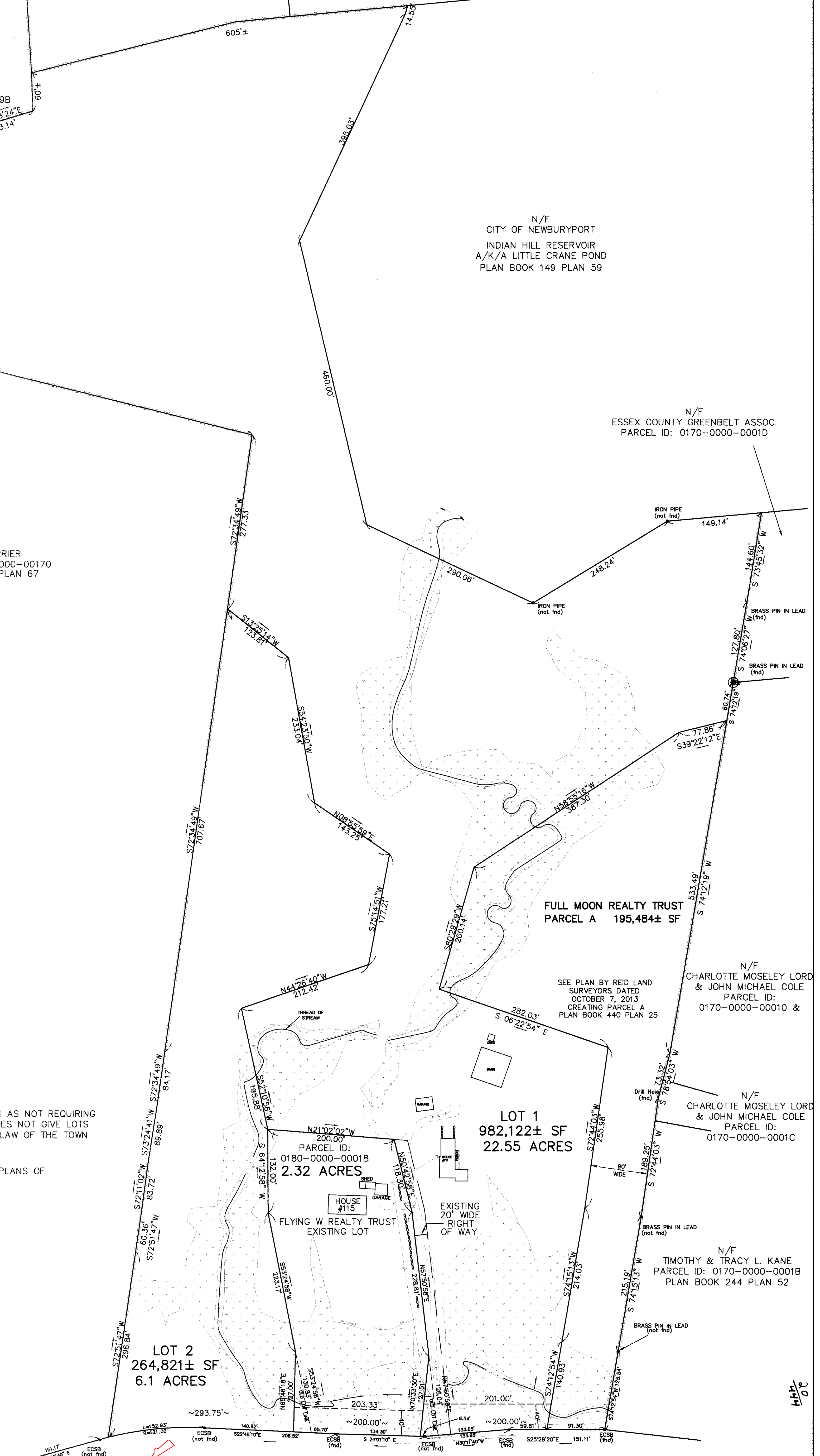
"THE PLANNING BOARD'S ENDORSEMENT OF THE PLAN AS NOT REQUIRING APPROVAL UNDER THE SUBDIVISION CONTROL LAW DOES NOT GIVE LOTS OR PARCELS ANY STANDING UNDER THE ZONING BY-LAW OF THE TOWN OF WEST NEWBURY."

NOTE: THIS PLAN WAS COMPILED FROM DEEDS AND PLANS OF RECORD AND AN INSTRUMENT SURVEY.

WEST NEWBURY, MASSACHUSETTS
 SUBDIVISION OF LAND
 PREPARED FOR:
FLYING W REALTY TRUST
 SANDRA ROULIER, TRUSTEE
 111 INDIAN HILL STREET
 PARCEL ID: 0180-0000-0018 & 0019
REID LAND SURVEYORS
 365 CHATHAM STREET
 LYNN, MASSACHUSETTS



INDIAN HILL STREET
 1927 ESSEX COUNTY LAYOUT



444/20

117 Indian Hill Street watershed property

Outlet stream connecting Indian Hill Reservoir to Artichoke Reservoir



117 Indian Hill Street



© 2012 Pictometry



167 Main Street
P. O. Box 716
Rowley Massachusetts
USA

978.948.7717 Office

derosaenvironmental.com

February 23, 2021

BY ELECTRONIC MAIL

Maggie Brown
Land Conservation Project Manager
Essex County Greenbelt Association
82 Eastern Avenue
Essex, MA 01929

maggie@ecga.org

Phone: (978)-768-7241 x25

RE: ASTM 1527-13 - Phase I: Environmental Site Assessment

Vacant Land
117 Indian Hill Street
West Newbury, MA 01985

Dear Ms. Brown,

This letter and report provide a summary of findings regarding environmental matters at the vacant, forested land property located at 117 Indian Hill Street in West Newbury, Massachusetts (Figures 3 and 4). At your request, our office (DeRosa Environmental Consulting, Inc.), conducted a Phase 1 Environmental Site Assessment consistent with the ASTM 1527-13 protocol and guidance documents. The purpose of this investigation was to identify any recognized environmental conditions (RECs) as defined in the ASTM Standard, and the report includes an investigation of the history of the site and land use of surrounding properties. The scope of work included a thorough site inspection of the properties, existing structures, and built spaces; personal interviews with persons knowledgeable about the site; as well as the review of pertinent federal, state, and local files and records. All work intends to meet the standard of "all appropriate inquiry" established as part of the ASTM standard protocol for a Phase I: Environmental Site Assessment.

Summary

In brief, no conditions indicative of a release or threat of release of oil or hazardous materials or recognized environmental conditions (RECs) were identified at the site based on current or historical site use. Accordingly, we do not recommend any additional investigatory or remedial activities be conducted at the vacant, forested property (Parcel ID: R18-19C) located at 117 Indian Hill Street in West Newbury, Massachusetts (the Site) at this time.

In order to evaluate subsurface conditions at the Site, it would be necessary to undertake further investigation, including the collection of soil and groundwater samples for laboratory analysis, but we do not foresee this as a necessary activity at this time.

The following is a brief summary of our principal findings. Additional information follows in the text and figures of the report. This report also contains collected photographs, which sometimes better illustrate site conditions.

Executive Summary & Findings

Based on site history information, our site inspection, and investigation of federal, state, and local files, we have established a reasonable description and assessment of the environmental condition of the site. Currently and historically, the Site has always remained as vacant, undeveloped land as seen in historical aerials dating back to 1938. The property likely remained as vacant land for many years prior to 1938, as no evidence of structures was observed on the property during the site reconnaissance. In the historical aerial dated 1938, much of the site was clear of vegetation, and the land appeared to function primarily as a maintained field. Following the 1938 historical aerial photograph, much of the field space appeared to have been abandoned and slowly became re-vegetated over time. Today, the southwest side of the Site is the only portion of the property that remains as a maintained field. The single parcel of land is identified by the West Newbury Assessor's Office as Map R18 Lot 19C (Figure 2). The parcel of land amounts to 6.1 acres. Most of the Site is comprised of upland, forested land with wetlands that travel through the eastern side of the property. The Site has a dense canopy tree layer with limited shrub species in the understory. One (1) wood road does travel through the southwest portion of the Site. No other roads, parking areas, or paths exist or access the Site. Access to the Site is only by foot from Indian Hill Street. In addition, there was no evidence of historical roads or trails on the parcel of land besides the single wood road that exists today.

This Phase 1 Environmental Site Assessment is being conducted since the land is proposed to be purchased by the Essex County Greenbelt Association as conservation land for the public to enjoy.

In general, the site includes one (1) parcel of land in a residential property setting in West Newbury. The 6.1 acres of land is currently vacant, forested land that has been untouched for many years. During the Site reconnaissance, little to no evidence of human activity was observed. There was snow cover during the site reconnaissance which limited observations to the forest floor at the Site. No debris, miscellaneous materials, and/or structures were identified at the Site. On the northeast side of the Site, it did appear that there have been historical excavation activities in this area due to unnatural mounds of earth. This was the only area and evidence of excavation work at the Site during the site reconnaissance. After review of historical records and observations of current site conditions, it was evident that there has been little historical human impact to the Site. Based on these lines of inquiry as well as our own site inspection, there are no environmentally related concerns or recognized environmental conditions that require attention at this time.

The following is a brief summary of our principal findings followed by conclusions and recommendations:

1. A detailed site history investigation was conducted using Environmental Data Resource (EDR) services and by interviewing local Town departments, including the Board of Health, Engineering Department, Building Department, and Fire Prevention Office.
2. The Town of West Newbury Assessor's Office field card for the Site indicates the single parcel of land to be vacant, forested land. They further identify the parcel as Map R18 Lot 19C.
3. The Site can be accessed by foot from Indian Hill Street, which borders the Site to the northeast. Currently there is no access drive or parking areas located on the property. A woods road does travel through a portion of the Site in the southwest corner. The woods road begins at the residential property located at 111 Indian Hill Street and leads to a maintained hay field that is partially on the southwest side of the Site and the adjacent property known as 115 Indian Hill Street. Reviewed historical evidence demonstrates that the parcel of land has not changed significantly dating back as far as 1938. This parcel likely remained the same for many years well before 1938. Today the parcel remains as vacant, forested land. Some large mature canopy trees were located throughout the forested parcel that support these findings.
4. Tyler Ferrick, Environmental Scientist/Project Manager at our firm (DeRosa Environmental Consulting, Inc.) conducted the site inspection on February 8, 2021. He was able to traverse the entire Site to completely assess the conditions of the vacant, forested lot. During the site inspection there was approximately 12-18 inches of snow that covered the ground surface. The site inspection covered the approximate 6.1 acres (the "Site"), and the ASTM guidelines for site inspection were followed during the site visit.
5. At that time, he hiked throughout the vacant, forested lot to assess the conditions of the Site. The topography of the Site was relatively high in elevation to the northeast and west. The elevation was lower on the northern and southern sides of the Site. In these areas freshwater streams and associated bordering vegetated wetlands were present. Most of the Site is upland soils, but there are two streams that flow through portions of the Site. The topography is generally high in elevation until it decreases quickly down to the wetlands. Due to much of the Site being upland resource area, the entirety of the Site could be traversed on foot. Throughout the inspection no debris and/or miscellaneous materials were observed on site. No environmental hazards were observed during the site reconnaissance. Additionally, no significant signs of human impact were present at the Site.
6. The Site is not serviced by any utilities. There are municipal overhead electric utilities that pass along Indian Hill Street to the northeast.
7. There are no buildings or structures that exist on the Site nor was there evidence of historical structures on site. Historically, there have not been any

structures that have existed at the Site, according to historical aerial photographs reviewed dating as far back as 1938. There are no access roads or parking areas that access the Site. There is only a portion of a woods road that passes through the western side of the Site. The Site can only be accessed by foot from Indian Hill Street. The entire woodlot was in good condition.

8. In order to evaluate soil and groundwater conditions at the Site, soil borings would need to be advanced and completed as groundwater monitoring wells. Soil and groundwater samples for laboratory analysis would then be collected and analyzed. However, in our professional opinion, this work is not necessary, since any conditions indicative of a release or threat of release of oil or hazardous materials and/or a recognized environmental condition were not identified at the site at this time, based on current and historical Site use.
9. Based on our investigation and the current and historical Site use as vacant, forested land, it is our professional opinion that no conditions representing threats of release of oil and/or hazardous materials or any recognized environmental conditions, beyond those that are considered de minimis conditions, have been identified at the Site at this time. De minimis site conditions are not considered recognized environmental conditions as part of the ASTM 1527-13 standard.

10. The ASTM Phase 1 ESA protocol (E-1527-05) defines "De minimus condition" as

" A condition that generally does not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis conditions are not recognized environmental conditions or controlled recognized environmental conditions."

Please call anytime, should you have any questions.

Respectfully Submitted,

DeRosa Environmental Consulting, Inc.



Tyler Ferrick, BS
Environmental Scientist/ Project Manager



Michael J. DeRosa, Principal
LSP, LEED AP, PWS

TCF/mjd

ASTM Environmental Site Assessments, Treatment System Design, Wetlands Permitting, LEED Certification Services, Landscape & Wetland Restoration

TRANSFERS



CITY OF NEWBURYPORT FY 2021

TRAN095_04_26_2021

TRANSFER/APPROPRIATION REQUEST

RECEIVED
CITY CLERK'S OFFICE
2021 APR 20 PM 1:51

Department: Department of Public Services

Submitted by: Anthony J. Furnari, Director

Date Submitted: 4/26/2021

Transfer From:

Account Name:	Receipts Reserved for Appr. Fuel	Balance:	\$ 155,803.91
Account Number:	2722-59600	Category:	\$ -
Amount:	\$35,000.00	Trans I/O:	\$ -

Why Funds Are Available:

This is the standard method of funding the DPS fuel and oil account. As City departments pay for gasoline, the funds are deposited into this reserve for appropriation account and then transferred into the fuel and oil expenditure account within the Highway budget to purchase more fuel.

Transfer To:

Account Name:	DPS Highway Fuel & Oil	Balance:	\$ 11,804.70
Account Number:	01421004-54801	Category:	\$ 72,889.16
Amount:	\$35,000.00	Trans I/O:	\$ -

Why Funds Are Needed:

Funds are required to buy gasoline and oil that is used by City vehicles.

Donna D. Holaday, Mayor: *Donna D. Holaday*

Date: 4/20/21

Ethan R. Manning, Auditor: *Ethan R. Manning*

Date: 4/20/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:

**APPOINTMENTS
FIRST READING**



CITY OF NEWBURYPORT RECEIVED
OFFICE OF THE MAYOR
DONNA D. HOLADAY, MAYOR
CITY CLERK'S OFFICE
NEWBURYPORT, MA

2021 APR 20 PM 1:18

60 PLEASANT STREET - P.O. Box 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
978-465-4402 FAX

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: April 20, 2021
Re: Re-Appointment

I hereby reappoint, subject to your approval, the following named individual as a member of the Fruit Street Local Historic District Commission. This term will expire on May 31, 2024.

Bonnie Sontag
21 Smith Street
Newburyport, MA 01950

21 Smith Street
Newburyport, MA 01950

Mayor Donna Holaday
City Hall
Newburyport, MA 01950

April 14, 2021

Dear Mayor Holaday:

I hereby request reappointment to the Fruit St. Local Historic District Commission as the Planning Board representative to the Commission. As my knowledge and experience with historic preservation has deepened over the years, I would like to continue to share this expertise with my community. It goes without saying that our wealth of historic structures requires constant vigilance in order to preserve these treasures for generations to come.

Thank you for allowing me to continue to serve on this Commission.

Sincerely,

Bonnie Sontag
Bsontag21@gmail.com
992-6261

Attached to email message containing this letter is a short auto-biography

Bonnie Sontag
21 Smith Street
Newburyport, MA 01950
978-992-6261
Bsontag21@gmail.com

Before her retirement from paid employment in 2011, Bonnie Sontag helped clients to collaboratively use their knowledge and experience to discover shared values, purposes, and projects. Her expertise in designing and facilitating participatory change projects included engagement of participants throughout an extended planning process as well as visioning sessions, workshops and interactive public meetings. Bonnie worked with public and private sector clients to produce significant change by redesigning business processes, identifying organizational and human resource needs, and planning changes that required the effective use of information for enhanced product or service delivery. She coached consultants in the use of visual metaphors and techniques for releasing the creative and emotional energy of their clients to produce actionable results. In addition to her many years as a management and organizational consultant in the private sector, she designed and facilitated participatory processes and events for the Boston Society of Architects, the city of Newburyport, MA, the town of Amesbury, MA, and the Essex National Heritage Area in the creation of the Essex Coastal Scenic Byway. She is a member of the Newburyport Planning Board and Vice-Chair of the Fruit Street Local Historic District Commission. Bonnie lived in Switzerland for 15 years and has worked extensively in Western Europe and other parts of the world.

**END OF CONSENT AGENDA
BEGINNING OF REGULAR AGENDA**

**APPOINTMENTS
SECOND READING**

SECOND READING APPOINTMENTS

- APPT239_04_12_2021 Kevin Hunt 14 Tenth St. Veterans Agt. 4/1/2022

In City Council April 12, 2021:

Motion to approve the Consent Agenda as amended by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 10 yes 1 absent (JE). Motion passes.

ORDERS



IN CITY COUNCIL

ORDERED:

**AN ORDER RELATIVE TO A SPECIAL ACT TO MAKE CERTAIN MINOR AMENDMENTS
TO THE CITY OF NEWBURYPORT HOME RULE CHARTER**

WHEREAS, Section 9-1 of the City of Newburyport Home Rule Charter provides that the charter may be replaced, revised or amended in accordance with any procedure made available under the state constitution, or by statutes enacted in accordance with the state constitution; and

WHEREAS, the City of Newburyport seeks to make minor amendments to its home rule charter;

THEREFORE, let it be ordained by the City Council of the City of Newburyport that the Mayor is hereby authorized, on behalf of the City: (a) to submit a Home Rule Petition to the General Court of the Commonwealth of Massachusetts to enact a Special Act for the City in the form attached hereto; (b) to act on behalf of the City relative to any inquiries made by the General Court concerning the proposed Special Act; and (c) to approve amendments to such Special Act provide that that they shall be consistent with objectives of the Home Rule Petition.

Councillor Jared J. Eigerman, Ward 2

**A SPECIAL ACT TO MAKE CERTAIN MINOR AMENDMENTS TO THE CITY OF
NEWBURYPORT HOME RULE CHARTER**

WHEREAS, Section 9-1 of the City of Newburyport Home Rule Charter provides that the charter may be replaced, revised or amended in accordance with any procedure made available under the state constitution, or by statutes enacted in accordance with the state constitution;

WHEREAS, the City of Newburyport seeks to make minor amendments to its home rule charter; and

WHEREAS, the Mayor and the City Council of the City of Newburyport, representing the citizens of the City of Newburyport have petitioned the General Court relative to these matters;

NOW, THEREFORE, BE IT ENACTED by the Senate and the House of Representatives in General Court assembled, and by the authority of the same as follows:

Section 1

The City of Newburyport Home Rule Charter is hereby amended as follows, with ~~deletions italicized and double-stricken through~~, and additions italicized and double-underlined?:

Sec. 1-7. – Definitions.

Unless another meaning is clearly apparent from the manner in which the word or phrase is used, the following words and phrases as used in this charter shall have the following meanings:

...

(4) “City office,” a position having charge of a city department, including, without limitation, the position of city solicitor.

(5) “City officer,” when used without further qualification or description, shall mean a person having charge of an office or department of the city who in the exercise of the powers or duties of that position exercises some independent statutory authority, including, without limitation, the city solicitor.

...

Sec. 2-6. – Exercise of powers; quorum; rules.

...

(c) *Rules of procedure.* The city council shall from time to time adopt rules regulating its procedures which shall be in addition to the following:

...

(2) Special meetings of the city council shall be held at the call of the president or at the call of any six or more members, for any purpose, by causing a notice of the meeting to be delivered (i) in hand or to the place of business or residence of each member of the city council; or (ii) by email to each member of the city council with electronic confirmation of receipt...

...

Sec. 2-9. – Ordinances and other measures.

(a) *Measures.* No measure that is an ordinance or an order shall be passed finally on the date on which it is introduced, except in the case of an emergency....

...

(c) *Charter objection.* On the first occasion that the question on adoption of a measure that is an ordinance or an order is put to the city council, if a single member present objects to the taking of the vote, the vote shall be postponed until the next meeting of the city council whether regular or special....

Sec. 3-1. – Mayor: Qualifications; term of office; compensation; prohibitions.

...

(d) *Prohibitions.* The mayor shall hold no other city office or city employment for which a salary or other emolument is payable from the city treasury. No former mayor shall hold any compensated appointed city office or city employment, nor shall they appear personally before any city agency as agent or attorney for anyone other than themselves, their spouse, their parents, their children, or their siblings, until one year following the date on which the former mayor's city service has terminated. This provision shall not prevent a city officer or other city employee who has vacated a position in order to serve as mayor from returning to the same office or other position of city employment held at the time the position was vacated, if such position exists, but no such person shall be eligible for any other municipal position until at least one year after the termination of service as mayor. This prohibition shall not apply to persons covered under the leave of absence provisions under the civil service law. Except as state law may otherwise expressly permit, a lawyer who has formerly served as mayor shall at no time represent a client in connection with a matter in which the lawyer participated personally and substantially while serving as mayor, unless the city council gives its informed consent, confirmed in writing, to the representation.

...

Sec. 6-5. – Capital improvement budget.

(a) *Submission.* No later than ~~April~~ May 15 of each year, the mayor shall submit a capital improvement program to the city council....

...

(c) *Adoption.* At any time after the public hearing but before ~~June~~ July 1 of each year, the city council shall by resolution adopt the capital improvements program with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvements program as submitted must specifically identify the method of financing proposed to accomplish such increase....

...

Sec. 9-7. – Uniform procedures governing multiple-member bodies.

...

- (b) *Meeting documents and submissions.* Each appointed multiple member body shall determine its own rules and order of business and shall provide for the keeping agendas, minutes and related submissions of its proceedings. All such documents shall be a public record, and certified copies shall be placed on file in the office of the city clerk and ~~in the city public library~~ on the website within fifteen days of their approval....

...

CITY OF NEWBURYPORT



IN CITY COUNCIL

April 26, 2021

ORDERED:

Whereas, on March 17, 2014 the Newburyport City Council pursuant to Massachusetts General Law Chapter 164 Section 134 resolved that the City of Newburyport initiate the process to become an aggregator of electric power on behalf of its residential and business communities; and

Whereas, on June 8, 2015 the Newburyport City Council resolved that the City of Newburyport adopt an Energy Aggregation Plan as prepared by the City's Aggregation consultant, Colonial Power Group, Inc. and submit such plan to the Massachusetts Department of Public Utilities; and

Whereas, the City of Newburyport Aggregation Plan was approved by the Massachusetts Department of Public Utilities; and

Whereas, following the approval of the Aggregation Plan, preliminary electricity risk was deemed unsatisfactory by the Energy Advisory Committee and therefore, the City has not yet solicited competitive bids from electricity suppliers to serve the Aggregation Plan; and

Whereas, currently, however, aggregation risks, pricing and options for renewable energy are more favorable; and

Whereas, the City of Newburyport intends, therefore, to solicit bids from electric suppliers to serve the Aggregation Plan, provided that if such bids are agreeable, an electric supply contract would need to be executed on the date bids are received.

BE IT THEREFORE RESOLVED that, the City of Newburyport publicly declares its intent to reaffirm its commitment as a municipally aggregated community, to obtain pricing, and to enter into an electric supply contract on behalf of its residential and business communities, and;

BE IT FURTHER RESOLVED that, an Ad Hoc Municipal Aggregation Committee be established to review competitive electric supply offers by the City's Electrical Aggregation Consultant and make recommendations to the Mayor. The Ad-Hoc Municipal Aggregation Committee will consist of 6 members including:

- The Mayor
- The City Council President (or City Council designate)
- The Recycling and Energy Manager
- Three members of the Energy Advisory Committee

A quorum shall consist of a minimum of 3 members and the Ad Hoc Municipal Aggregation Committee will provide periodic updates to the City Council on the Municipal Aggregation program.

BE IT FURTHER RESOLVED that, the Newburyport City Council authorizes the Mayor to negotiate and enter into an electric supply contract in consultation with the City's Ad Hoc Municipal Aggregation Committee and the City's Electrical Aggregation Consultant on such terms and conditions as the Mayor determines for a term not to exceed 36 months and to be in the best interests of electricity consumers in the City.

Councillor Heather L. Shand

Councillor Charles F. Tontar

Councillor Christine E. Wallace

ORDINANCES

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

AN ORDINANCE TO AMEND SECTION VI-C OF THE NEWBURYPORT ZONING ORDINANCE AS TO THE NUMBER OF RESIDENTIAL STRUCTURES PERMITTED ON A LOT:

Be it ordained by the City Council of the City of Newburyport as follows:

THAT Section VI-C of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~double stricken through and in bold~~, and additions double-underlined and in bold:

VI-C - ~~One~~ Number of residential ~~structure~~ buildings per lot.

- (1) Except as otherwise permitted in this Section VI-C or elsewhere in this zoning ordinance, only ~~Not more than~~ one (1) building ~~or structure intended for use as a~~ containing residential dwelling units shall be erected, placed or converted to use as such on any lot, ~~in a subdivision or elsewhere in the city without a special permit issued by the planning board pursuant to X-H.7 and X-H.8. Additionally, the following five criteria must be satisfied:~~
- (2) In a zoning district where a two-family dwelling is allowed by right or by special permit, the planning board may grant a special permit to allow two single-family dwellings on a lot, subject to the following:
 - ~~(1.) The application shall include conceptual by-right development plans, such as a conventional subdivision, to demonstrate to the planning board that more than one residential structure per lot is a reasonable alternative to other allowed developments of the parcel involved.~~
 - ~~(2.) A clear public benefit is derived from the proposed development, including but not limited to a long-term restriction involving one or more of the following:~~
 - ~~a. Creation of affordable housing;~~

~~b. Preservation of historical structures; and/or~~

~~c. Conservation of significant natural resources.~~

~~(3.) Unless the residential structures are located side-by-side and have the same front yard setback, then one (1) residential structure shall be subordinate to the other dwelling in appearance by meeting either of the following:~~

~~a. Covering at least ten (10) percent less building footprint and built no higher than the existing dwelling; or~~

~~b. Located entirely within the envelope of an accessory building in existence on the effective date of this ordinance.~~

~~(4.) The plan provides adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision.~~

~~(5.) The proposed residential structures shall comply with all other applicable zoning regulations.~~

a. The lot and buildings shall comply with the following development standards:

i. The proposed residential density shall comply with the lot area requirements for a two-family dwelling in the zoning district.

ii. Both residential buildings shall comply with the setback requirements for principal single family buildings.

iii. Both residential buildings shall comply with all other applicable zoning regulations.

iv. The proposed buildings shall be arranged on the lot in one of the following manners:

(a) The two residential buildings shall be located side-by-side and shall be set back no more than 10 feet further from the street than the average front yard setbacks for existing dwellings on the same block of the street on which they have frontage; or

(b) If the lot has frontage on two streets (i.e., the lot is a corner lot or a through lot), each residential building may be located fronting on a different street from the existing dwelling, provided that each building has a separate and distinct rear yard conforming to the rear yard requirement for the zoning district; or

- (c) One residential building may be created by conversion of an accessory building in existence on the effective date of this ordinance, such as a garage or carriage house. In such case, the converted building shall not be increased in height, nor expanded outward other than by dormers, porches or decks not exceeding 500 square feet in total.
- b. When the lot contains an existing building listing as “Contributing” (C) within the Newburyport Historic District, the application for a special permit shall include a proposed perpetual preservation restriction on said historic building approved by the Newburyport Historical Commission.
- c. Before granting a special permit under this section VI-C, the planning board shall find that all of the following criteria are met:
- i. The design and layout of buildings and open spaces on the site will be consistent with the established character, scale, massing and density of the surrounding neighborhood.
 - ii. The buildings and accessory off-street parking areas will maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.
 - iii. Developing a second residential building on the lot will be equally or more beneficial to the neighborhood than subdividing the lot or providing two dwelling units in a two-family dwelling.
- e. In granting a special permit to allow two residential buildings on a lot, the planning board may impose building size or setback standards that are more restrictive than established by the ordinance for a two-family dwelling in the zoning district.
- f. In consideration of the increase in value represented by the granting of a special permit under this section VI-C, the applicant shall make a financial contribution to the Affordable Housing Trust Fund in an amount equal to \$10.00 per sq.ft. of the additional second residential building on the lot, said payment to be made prior to the issuance of a building permit for said second residential building.

~~AND FURTHER, THAT the definition of “Multifamily” (Use 103) in Section V-E of the Zoning Ordinance be amended pursuant to Section XII-B (Adoption and Amendment) to read as follows, with deletions double stricken through and in bold, and additions double underlined and in bold:~~

~~A building or buildings on one lot where one structure that contains three (3) or more dwelling units and each additional structure contains two (2) or more~~

~~dwelling units on the same lot, and units within the same structure have either common floor-ceiling assemblies between the dwelling units, or Common Wall Connectors as defined in section II-B, definitions.~~

Councillor Heather L. Shand

In City Council January 27, 2021:

Motion to accept the late file by Councillor Zeid, seconded by Councillor McCauley. So voted.
Motion to refer to Planning & Development by Councillor Khan, seconded by Councillor Shand.
So voted.

In City Council March 29, 2021:

(As Amended) Motion to Waive the Rules by Councillor Vogel, seconded by Councillor Khan, Roll Call vote. 11 Yes. Motion to approve as amended by Councillor Shand, seconded by Councillor Khan. Motion to amend to strike (2)a.iv.(c) by Councillor Zeid, seconded by Councillor McCauley. Roll call vote. 6 No, 5 Yes (CT, SZ, JD, JM, JE). Motion fails. Motion to amend (2)a.iv.(e)(n.b. Should be (d) not (e)) by adding the following: Further, the Planning Board shall require, in all Special Permits granted under this section, that no further subdivision of the lot be permitted by Councillor Zeid, seconded by Councillor Tontar. Council President Eigerman steps down, Councillor Tontar President Pro Tempore. Roll Call vote. 11 Yes, Motion passes. Motion to amend (2)a.iv.(f)(n.b. Should be (e) not (f)) to \$100 per square foot by Councillor McCauley, seconded by Councillor Lane. Motion withdrawn by Councillors McCauley and Lane. Motion to amend (2)a.iv.(f) to \$40 per square foot by Councillor McCauley, seconded by Councillor Lane. Motion to continue to a date certain, April 12, 2021, by Councillor Eigerman, seconded by Councillor Khan. Roll call vote. 9 yes, 2 no (BV, JD). Motion passes.

In City Council April 12, 2021

Motion to amend Sec VI-C (2)a.iv.(f) to \$40 per square foot by Councillor McCauley, seconded by Councillor Lane pending.

Motion withdrawn by Councillors McCauley and Lane. Motion to amend Sec VI-C (2)a.iv.(f) to \$20 per square foot by Councillor McCauley, seconded by Councillor Shand. Roll call vote. 10 yes, 1 absent (JE). Motion passes. Motion to approve amended 1st reading by Councillor McCauley, seconded by Councillor Lane. Roll call vote. 9 yes, 1 no (SZ), 1 absent (JE). Motion passes.

CITY OF NEWBURYPORT



—
IN CITY COUNCIL

ORDERED:

March 19th, 2020

AN TIME-LIMITED ORDINANCE TO AMEND CHAPTER 11 OF THE MUNICIPAL CODE REGARDING PARKS AND RECREATION IN RESPONSE TO THE COVID-19 PANDEMIC

Be it ordained by the City Council of the City of Newburyport as follows:

Add to Chapter 11, Subsection 11-7, a New Subsection C – “COVID19 Parks Permitting” to read as follows:

In response to the COVID-19 pandemic, the City Council, in consultation with the Parks Commission, establishes a fee of \$0/hour in certain cases defined as follows:

- A) Recurring use of the following Parks:
 - a. Cashman Park Ballfield
 - b. Perkins Park Ballfield
 - c. Cashman Park Soccer Field
 - d. Cherry Hill Soccer Field Parcel A
 - e. Cherry Hill Soccer Field Parcel B
 - f. Bradley Fuller Park Infield
 - g. Bradley Fuller Park North Field
 - h. Woodman Park Multi-Use Field
 - i. Cashman Park Tennis
 - j. Perkins Park Tennis
 - k. Bartlet Mall Basketball Courts
 - l. Cashman Park Basketball Court
 - m. G.W. Brown School Playground Basketball
 - n. Perkins Park Basketball Courts
 - o. Woodman Park Basketball Courts
 - p. Atkinson Common, Lower, Founders Field
 - q. Atkinson Common, Lower, Pepe Field
 - r. Atkinson Common, Lower, Hawkes Field
 - s. Atkinson Common Tennis
 - t. Brown Square
 - u. Atkinson Common, Upper
 - v. Atkinson Common, Lower
 - w. Atwood/Garrison Gardens

- x. Bartlett Mall (other than athletic fields or courts)
 - y. Cashman Park (other than athletic fields or courts)
 - z. Moseley Woods Pavilion
- B) 5 or fewer weekdays in any given week
 - C) No more than 2 hrs. on any given day
 - D) No tents or structures of any kind, temporary or permanent, are permitted
 - E) Requests for usage on any weekend day may not be permitted under this subsection
 - F) No more than 20 participants maximum (subject to other laws and regulations promulgated by other entities)

Any permit being requested under this specific subsection shall be made to the Parks Commission or its designee, which shall render a decision on the application within 7 days, with an application that shall include the following at minimum:

- A) Identification of the individual or organization
- B) Primary contact with contact information (including physical mailing address, phone number, and the cellphone number of the primary contact)
- C) A list of specific dates and time slot(s) requested
- D) A description of the proposed use
- E) A valid insurance binder with a minimum of \$1M of coverage indicating that the City of Newburyport is an additional named insured without limitation or any other additional requirement.

For the purposes of clarity, this subsection alters fees and permitting in specific cases for a defined period of time overriding 11-5v, 11-7 (specifically Group C) but shall not be construed to alter, eliminate, or supersede any other aspect of Chapter 11 or any rules promulgated by the Parks Commission.

Applicants are on notice that these are requests for fee-free usage of public Parks which belong to the residents of Newburyport. The Parks Commission must weigh this against any permit application and across all permit applications. In addition, the Parks Commission must also be mindful of congestion as permit applications are processed.

The Parks Commission may, at its sole discretion, approve or deny permits. Any such grant is a revocable license and, as such, may be revoked by the Parks Commission upon a supermajority vote during a public meeting.

This section and any permits approved under it shall expire on August 31, 2021 ~~April 30th, 2021~~ at 11:59 PM unless this subsection is extended by the City Council or unless any individual permit is revoked by the Parks Commission at any time.

Sharif I. Zeid, Ward 1 City Councillor

Joseph H. Devlin, At Large City Councillor

In City Council March 29, 2021:

Motion to approve 1st Reading by Councillor Zeid, seconded by Councillor Devlin. Motion to move to a date certain, April 12, 2021, by Councillor Zeid, seconded by Councillor Devlin. Roll call vote. 11 yes. Motion passes.

In City Council April 12, 2021:

Motion to approve 1st reading by Councillor Zeid, seconded by Councillor Devlin pending.

Motion to approve 1st reading by Councillor Zeid, seconded by Councillor Devlin. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

April 26, 2021

AN ORDINANCE TO DESIGNATE A SAFETY ZONE ON MERRIMAC STREET ADJACENT TO LOWER ATKINSON COMMON

Be it ordained by the City Council of the City of Newburyport as follows:

THAT Chapter 13 Article IV of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to read as follows, with ~~deletions double-stricken and in italicized~~, and additions double-underlined and italicized:

DIVISION 8. - SAFETY ZONES

Sec. 13-192. - Established.

The City of Newburyport establishes Safety Zones under the provisions of M.G.L. c. 90, § 18B that regulate statutory speed limits to twenty (20) miles per hour in these designated areas. Regulatory speed limit signs, including Safety Zone speed limit signs, are required to conform to the Manual on Uniform Traffic Control Devices, per M.G.L c. 85 § 2.

Sec. 13-193. - Designated.

The following portions of streets are located in designated safety zones:

<u>Street</u>	<u>Extent</u>
<u>Merrimac Street</u>	<u>Moulton Street to Plummer Avenue</u>

Submitted,

Councillor Christine E. Wallace

Councillor James J. McCauley

Councillor Charles F. Tontar

Approve: _____
Donna D. Holaday, Mayor

Attest: _____
Richard B. Jones, City Clerk

Date: _____

COMMITTEE ITEMS

Committee Items- April 26, 2021

Budget & Finance

Budget & Finance

In Committee:

TRAN090_04_12_2021	Water Retained Earnings \$155K to Watershed Land Acquisition \$155K with supporting documents
TRAN091_04_12_2021	HWY Streetlights \$2,646 to Essex North Shore Tech School \$2,646
TRAN092_04_12_2021	Overlay Surplus Account \$99,010 to ASR Revaluation \$99,010
TRAN093_04_12_2021	GEN EVENT COORDINATOR \$4K to AUD MISC SUPPLIES \$500 and to GEN SUPPLIES-OFFICE \$3,500
TRAN094_04_12_2021	RRFA-Paid Parking Fund \$5,550 to PKG Part Time Enforcement Off \$4,500 and to PKG Clothing allowance \$1,050
ORDR243_04_12_2021	FONT Gift Acceptance with letter



CITY OF NEWBURYPORT FY 2021

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

Department: Department of Public Services

Submitted by: Anthony J. Furnari, Director

Date Submitted: 4/12/2021

Transfer From:

Account Name: Water Retained Earnings Balance: \$ 1,398,128.00

Account Number: 60-35920 Category: \$ -

Amount: \$155,000.00 Trans I/O: \$ -

Why Funds Are Available:

The Massachusetts Department of Revenue certified Retained Earnings for the Water Enterprise Fund for FY2021 at \$1,398,128. These funds are available for any legal expenditure with the approval of the Mayor and a majority vote of the City Council.

Transfer To:

Account Name: Watershed Land Acquisition Balance: \$ -

Account Number: New Category: \$ -

Amount: \$155,000.00 Trans I/O: \$ -

Why Funds Are Needed:

To purchase property within the watershed for the City of Newburyport's public water supply. Please see attached memo.

Donna D. Holaday, Mayor:

Donna D. Holaday

Date:

4/6/21

Ethan R. Manning, Auditor:

Ethan R. Manning

Date:

4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



CITY OF NEWBURYPORT
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400 • (978) 465-4452 (FAX)

DONNA D. HOLADAY
MAYOR

MEMORANDUM

TO: NEWBURYPORT CITY COUNCIL
FROM: TOM CUSICK, WATER TREATMENT SUPERINTENDENT, & GEORDIE VINING, SENIOR PROJECT MANAGER
CC: DONNA HOLADAY, MATT COOGAN, ANDY PORT, ETHAN MANNING, TONY FURNARI
SUBJECT: 117 INDIAN HILL STREET WATERSHED PROTECTION PROJECT
DATE: 4/6/2021

We are writing to request the City Council's approval of the \$155,000 purchase of a high priority 6.1-acre watershed property (117 Indian Hill Street) that is critical to the protection of the City's public water supply.

The subject property contains a portion of the outlet stream that is the only connection between the City's Indian Hill Reservoir, which contains the majority of Newburyport's drinking water supply, to the Artichoke Reservoir and ultimately the treatment plant. The City has sought to purchase this priority property for two decades, and the City's partnership with Essex County Greenbelt Association has been crucial to securing this current opportunity.

The 6.1-acre woodland property is entirely within MassDEP's Surface Water Supply Protection Zones A and B. The property is directly adjacent to protected land owned by Greenbelt, which is adjacent to watershed land owned by the City of Newburyport around the Indian Hill Reservoir. If left unprotected, this watershed property is clearly threatened by development. Five years ago, the landowner developed plans and successfully secured an Order of Conditions to build an access roadway, including a stream crossing, and a house and septic system near the outlet stream and reservoir. In addition to the potential for impacts from a potential failing septic system in the future, development would significantly alter the property with impermeable surfaces providing a vector for potential household hazardous waste, motor oil, gasoline, road salt, lawn chemicals, etc., which would threaten the City's ability to maintain a clean, reliable public water supply.

In addition, the City's consultant Tighe & Bond has identified this property as a key part of a potential water pipeline route if the City chooses in the future to develop a raw water main pipeline that would carry water directly from the Indian Hill Reservoir to the Water Treatment Plant Intake Pump Station at the Lower Artichoke Reservoir.

Essex County Greenbelt Association has the property under agreement, and, based on the current landowner's needs, is pre-acquiring the property for the City in mid-April. Greenbelt is also contributing all of the due diligence materials for the acquisition, including a recent appraisal, environmental site assessment, and title review, and will handle the closing for the City and recording of the property. The City will provide a conservation restriction to Greenbelt and will retain rights to potentially build a public water main transmission line in the future if desired.

The Newburyport Water and Sewer Commission reviewed and approved this watershed land acquisition project in March 2021. The \$155,000 purchase price is under the recently appraised value of \$165,000. Funding for the \$155,000 acquisition will come from the Water Enterprise Fund Retained Earnings, which has ample funding for this purpose (\$1.4 million).

Attached materials include: a draft Purchase & Sale Agreement between the City and Greenbelt including the draft conservation restriction, which has been sent to the City Solicitor for review; Survey Plan; Map of the Newburyport Drinking Water Supply Protection District; Appraisal; Photographs; and Environmental Site Assessment cover letter and summary. The Finance Department is providing the transfer form.

Thank you for your consideration and support of this important public project.

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the “Agreement”) is entered into as of _____, 2021 (the “Effective Date”), by and between ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts nonprofit corporation (together with its successors and assigns, “Seller”) and the CITY OF NEWBURYPORT, a municipal corporation within Essex County in the Commonwealth of Massachusetts, acting by and through its Water & Sewer Commissioners (“Buyer”).

RECITALS

A. The addresses, telephone numbers and facsimile numbers of the parties are as follows. Email addresses are provided for informational purposes only.

SELLER:

Essex County Greenbelt Association, Inc.
82 Eastern Avenue
Essex, MA 01929
Attn: Vanessa Johnson-Hall
Tel: (978) 768-7241 x 16
Fax: (978) 768-3286
Email: vkjohnson@ecga.org

With a copy to:

Lauren L. Butler, Esq.
258 Harvard Street #281
Brookline, MA 02446
Tel: (617) 654-8282
Fax: (617) 730-8449 *(faxes must include telephone number above on fax cover sheet in order to constitute valid notice)*
Email: lauren@laurenbutlerlaw.com

BUYER:

City of Newburyport
Attn: _____
60 Pleasant Street
Newburyport, MA 01950
Tel: () _____
Fax: () _____
Email: _____

With a copy to:

_____, Esq.

Tel: () _____
Fax: () _____
Email: _____

B. Seller has the right to acquire fee simple title to that certain 6.1+/- acre parcel of land located at 117 Indian Hill Street, West Newbury, Essex County, Massachusetts, and shown as Lot 2 on that certain plan entitled “West Newbury, Massachusetts, Subdivision of Land Prepared For: Flying W Realty Trust, Sandra Roulier, Trustee, 111 Indian Hill Street,” prepared by Reid Land Surveyors, dated March 26, 2014, and recorded in the Southern Essex District Registry of Deeds in Plan Book 444 as Plan 20 (a copy of which is attached hereto as **Exhibit A** and incorporated herein), which parcel is commonly identified as Assessor Parcel 0180-0000-0019C in the Town of West Newbury property records (collectively, together with any and all improvements, fixtures, timber, water and/or minerals located thereon and any and all rights appurtenant thereto, including, but not

limited to, timber rights, water rights, grazing rights, access rights and mineral rights, and rights in or to abutting roadways, the "Subject Property") from John J. O'Connor ("Current Owner") pursuant to a purchase and sale agreement dated as of February 25, 2021 (as it may be amended from time to time, the "Acquisition Contract").

C. Seller wishes to sell the Subject Property to Buyer and Buyer wishes to purchase the Subject Property from Seller subject to the terms of this Agreement.

D. Immediately following its acquisition of the Subject Property, Buyer shall convey to Seller a permanent conservation restriction on, over and across the Subject Property (in its final form, the "CR"), which conservation restriction shall be substantially similar to the draft document attached hereto as **Exhibit B** and incorporated herein, and Seller agrees to accept the CR, subject to the terms of this Agreement.

E. Seller represents to Buyer that it is a conservation organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands in Essex County, Massachusetts. Seller represents to Buyer that it is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Seller is not a private foundation within the meaning of Section 509(a) of the Internal Revenue Code.

AGREEMENT

1. **Purchase and Sale.** In consideration of the covenants made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell the Subject Property to Buyer and to accept the CR from Buyer, and Buyer agrees to buy the Subject Property from Seller and convey the CR to Seller, all on the terms and conditions set forth in this Agreement.

2. **Purchase Terms.** The purchase price for the Subject Property shall be One Hundred Fifty-Five Thousand Dollars (\$155,000.00) (the "Purchase Price"). The Purchase Price shall be delivered to Escrow Agent (as defined in Section 5 herein) for the Closing (as defined in Section 5 herein) by a wire transfer of immediately available funds at least three (3) business days prior to the Closing Date (as defined in Section 5 herein), subject to credits, prorations and adjustments provided elsewhere in this Agreement. The CR is being conveyed by Buyer to Seller in accordance with the terms of that certain vote dated _____, and no consideration is being paid by Seller for the CR.

3. **Due Diligence Investigations; As-Is, Where-Is Condition.**

(a) **Property-Related Materials; Access:** At no expense to Buyer, Seller has provided Buyer with the following materials relating to the Subject Property: (i) a title commitment issued by Fidelity National Title Insurance Company with an effective date of February 8, 2021 (the "Title Commitment") and copies of all instruments of record referenced therein, (ii) a Phase I environmental assessment report, and (iii) an appraisal

prepared by an independent appraiser licensed by the Commonwealth of Massachusetts. Additionally, upon Buyer's request, Seller shall arrange for Buyer, its employees and/or agents to tour the Subject Property prior to Closing to confirm that the Property is being delivered in accordance with the terms of Section 12 herein, provided that Seller shall accompany Buyer on all entries upon the Subject Property.

(b) As-Is, Where-Is Condition. Unless this Agreement has been earlier terminated in accordance with the terms of Section 11 herein, at Closing, Buyer hereby agrees to purchase and accept the Subject Property in AS-IS, WHERE-IS condition as of the date hereof, reasonable wear and tear excepted. Accordingly, Buyer hereby waives any and all claims it might otherwise have against Seller, now or in the future, relating to the title to, condition of, siting and/or boundaries of, and/or value of the Subject Property, provided, however, that this sentence shall not serve to negate, modify, or amend any warranties of title and/or covenants made by Seller in the Deed (as defined in Section 4 herein).

4. Title. The Subject Property shall be conveyed to Buyer subject only to (i) applicable laws and regulations of any governmental authority in effect on the date hereof, (ii) the nondelinquent lien of real property taxes, water and sewer charges and municipal betterments, if any, (iii) those matters of record set forth in the Title Commitment, and (iv) those matters which would have been disclosed by a current survey of the Subject Property (collectively, the "Permitted Encumbrances"). At Closing, Seller's right, title and interest in and to the Subject Property shall be conveyed by a good and sufficient Massachusetts quitclaim deed running to Buyer from Seller and conveying good and clear record title to the Subject Property (the "Deed"). The CR shall be granted to Seller by Buyer subject only to the Permitted Encumbrances and the CR shall be recorded in the Essex Southern District Registry of Deeds immediately following the Deed.

5. Closing. The delivery and exchange of the Deed, Purchase Price, CR and other closing documents and the full settlement of the obligations of the parties hereto (collectively, the "Closing") shall occur on July 30, 2021, or at such other time or place mutually agreeable to the parties.

The transaction contemplated hereunder shall be closed by a representative of Fidelity National Title Insurance Company or Chicago Title Insurance Company (as applicable, "Escrow Agent") in accordance with the general provisions of the usual form of escrow agreement then in use by Escrow Agent (with such special provisions inserted in said escrow agreement as may be required to conform with the terms and conditions of this Agreement) and/or pursuant to closing instructions provided by the parties, with the cost of the escrow being borne by Seller. No later than 5:00 p.m. Eastern Time on the third (3rd) business day prior to the Closing Date, (a) Seller shall deposit with Escrow Agent the Seller Deliveries (as defined in Section 6 herein), and (b) Buyer shall deposit with Escrow Agent the Buyer Deliveries (as defined in Section 6 herein). At the Closing, Escrow Agent shall disburse all monies in strict accordance with the closing statement, record the Deed, the CR and any other required documents or plans, and deliver to the appropriate parties all other closing documents. It is agreed that Escrow Agent shall have no liability to Seller or Buyer for the performance of its services herein, except in the event of Escrow Agent's gross negligence and/or willful misconduct.

6. **Closing Deliveries.** All closing documents shall be originals executed by an authorized representative of Seller or Buyer, as applicable, and if such closing document is intended to be recorded, each signature will be properly acknowledged.

(a) **Seller's Deliveries.** Seller shall execute and/or deliver to Escrow Agent the following items no later than 5:00 p.m. Eastern Time on the third (3rd) business day prior to the Closing Date (collectively, "**Seller's Deliveries**"): (i) counterparts to a settlement statement by and among Seller, Buyer and Escrow Agent (the "**Settlement Statement**"), (ii) the Deed, (iii) an owner's affidavit attesting to the absence of parties in possession and mechanics' liens, (iv) a Foreign Investment and Real Property Tax Act (FIRPTA) affidavit, (v) the fully executed CR, and (vi) such other instruments and documents as Buyer may reasonably request, including, without limitation, documents for the purpose of confirming the proper and lawful execution and delivery of closing documents, the conveyance of the Subject Property to Buyer and the acceptance of the CR by Seller, all in accordance with this Agreement and applicable provisions of Massachusetts law.

(b) **Buyer's Deliveries.** Buyer shall execute and/or deliver to Seller or Escrow Agent the following items no later than 5:00 p.m. Eastern Time on the third (3rd) business day prior to the Closing Date (collectively, "**Buyer's Deliveries**"): (i) a counterpart to the Settlement Statement, (ii) the Purchase Price, and (iii) such other instruments and documents as Seller may reasonably request, including, without limitation, documents for the purpose of confirming the proper and lawful execution and delivery of closing documents and the conveyance of the CR to Seller, all in accordance with this Agreement and applicable provisions of Massachusetts law, provided, however, that Buyer shall not be required to indemnify Seller for any matters arising from the transaction contemplated herein.

7. **Closing Expenses and Prorations.** Seller shall pay all statutorily required transfer taxes, if any, and all costs associated with the recording of the Deed, the CR and any other instruments. Taxes for the then-current fiscal year shall be apportioned as follows: if taxes are outstanding as of the Closing Date, taxes will be apportioned as of the Closing Date in accordance with G.L. c. 59, §72A; if, however, taxes have been paid through and past the Closing Date, such payments shall not be refunded, it being acknowledged that Buyer has no funds to refund Seller for such taxes paid and Buyer, being tax exempt, has no obligation to pay taxes upon acquisition of the Subject Property. Each party shall be responsible for its own legal expenses and the cost of its own title policies, if any.

8. **Seller's Representations and Warranties.** Seller makes the following representations and warranties:

(a) Seller is not a "foreign person" pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended.

(b) Neither Seller nor any key personnel of Seller have engaged in any dealings or transactions, directly or indirectly, (i) in contravention of any U.S., international or other anti-money laundering regulations or conventions, including without limitation the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United

States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Trading with the Enemy Act (50 U.S.C. §1 et seq., as amended), any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the “Patriot Act”), or any order issued with respect to anti-money laundering by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), or (ii) in contravention of Executive Order No. 13224 issued by the President of the United States on September 24, 2001 (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time (“Executive Order 13224”) or (iii) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, OFAC, Financial Action Task Force, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time.

(c) Neither Seller nor any key personnel of Seller is or will be a person or entity (i) that is listed in the Annex to or is otherwise subject to the provisions of Executive Order 13224, (ii) whose name appears on OFAC’s most current list of “Specially Designated Nationals and Blocked Persons,” (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>), (iii) who commits, threatens to commit or supports “terrorism”, as that term is defined in Executive Order 13224, or (iv) who has been associated with or is otherwise affiliated with any entity or person listed above.

(d) Seller has full power and authority to enter into this Agreement (and the persons signing this Agreement for Seller have full power and authority to sign for Seller and to bind it to this Agreement) and to convey the Subject Property and accept the CR at Closing.

(e) Neither the execution and delivery of the Agreement nor Seller’s performance of its obligations hereunder will constitute a breach or default under any agreement to which Seller is bound.

Each of the above representations is material and is relied upon by Buyer. Except insofar as Seller has advised Buyer in writing to the contrary, each of the above representations shall be deemed to have been made as of Closing and shall survive Closing. If, before Closing, Seller discovers any information or facts that would materially change the foregoing warranties and representations, Seller shall immediately give notice to Buyer of those facts and information.

9. **Seller’s Covenants.** Seller covenants and agrees as follows:

(a) To the extent allowed pursuant to the terms of the Acquisition Contract and/or during Seller's period of ownership of the Subject Property, Seller shall not consent to, make and/or extend any lease, contract, option or agreement affecting the Subject Property which would grant any third parties any rights to the Subject Property other than a Permitted Encumbrance, except with the written consent of Buyer; and

(b) To the extent allowed pursuant to the terms of the Acquisition Contract and/or during Seller's period of ownership of the Subject Property, Seller shall not consent to, cause and/or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon or created with respect to the Subject Property other than a Permitted Encumbrance, except with the written consent of Buyer.

10. **Buyer's Covenants.** To facilitate the execution of the CR by the Commonwealth of Massachusetts, Buyer covenants and agrees to deliver its original executed and acknowledged counterpart to the CR to Seller no later than the twenty-first (21st) calendar day after the CR has been approved by the Commonwealth of Massachusetts for local signature.

11. **Remedies Upon Failure of Performance.**

(a) In the event that Seller fails to perform any of Seller's obligations under this Agreement, Buyer shall have as its sole remedies the right to (i) waive such failure or breach and proceed to Closing with no reduction in the Purchase Price, (ii) terminate this Agreement upon written notice to Seller, in which case the parties shall have no further obligations hereunder, or (iii) specific performance. Notwithstanding the foregoing, however, Buyer acknowledges and agrees that Seller's performance hereunder is expressly conditioned upon Seller's acquisition of the Subject Property pursuant to the Acquisition Contract, and if Seller fails to acquire the Subject Property under the Acquisition Contract for any reason whatsoever prior to Closing, Seller may terminate this Agreement upon written notice to Buyer, in which case the parties shall have no further obligations hereunder; provided, however, that Seller shall exercise good faith and due diligence with respect to the Acquisition Contract (which good faith and due diligence shall not include any instigation of and/or participation in litigation).

(b) In the event that Buyer fails to perform any of its obligations under this Agreement, Seller shall have as its sole remedies, the right to (i) waive such failure or breach and proceed to Closing or (ii) terminate this Agreement upon written notice to Buyer, in which case the parties shall have no further obligations hereunder.

12. **Delivery of the Subject Property.**

(a) At Closing, Seller shall deliver to Buyer full possession of the Subject Property free and clear of the rights and claims of all other parties, other than as set forth in the Permitted Encumbrances. Seller also shall deliver to Buyer any and all keys, lock combinations and/or alarm codes that control access to the Subject Property or any portion thereof.

(b) At Closing, the Subject Property is to be then in substantially the same condition as it was on the Effective Date, reasonable wear and tear excepted, except that the Subject Property shall be free and clear of any and all personal property (whether owned and/or leased by Current Owner or owned and/or leased by any tenant or occupant), trash and/or debris.

13. **No Assignment of Buyer's Interest.** Buyer may not assign its interest in this Agreement without the written consent of Seller.

14. **Notices.** All notices pertaining to this Agreement shall be in writing delivered to the parties personally, by facsimile, commercial express courier service or by first class United States mail, postage prepaid, addressed to the parties at the addresses set forth in Recital A. All notices given personally or by facsimile shall be deemed given when received. All notices given by mail or by commercial express courier service shall be deemed given when deposited in the mail, first class postage prepaid, or with such courier, addressed to the party to be notified. The parties may, by notice as provided above, designate a different address to which notice shall be given.

15. **Time of the Essence.** Time is of the essence in this Agreement.

16. **Next Business Day.** In the event that any date for performance or notice hereunder falls on a Saturday, Sunday, a date on which a state of emergency has been declared in the Commonwealth of Massachusetts, a state, federal or bank holiday, or, with respect to the Closing Date, a date on which the applicable registry of deeds is closed for any reason, the deadline for such performance or notice shall be automatically extended to the next business day.

17. **No Broker's Commission.** Each party represents to the other that it has not used a real estate broker in connection with this Agreement or the transaction contemplated by this Agreement. In the event any person asserts a claim for a broker's commission or finder's fee against one of the parties to this Agreement, the party on account of whose actions the claim is asserted will, to the extent permitted by law, indemnify and hold the other party harmless from and against said claim. The provisions of this Section 17 shall survive the Closing and any earlier termination of this Agreement.

18. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to conflict of law principles.

19. **Binding on Successors.** This Agreement shall be binding not only upon the parties, but also upon their respective assigns and/or successors in interest.

20. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between Buyer and Seller pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. No supplement, modification, waiver or amendment of this Agreement shall be binding unless specific and in writing executed by the party against whom

such supplement, modification, waiver or amendment is sought to be enforced. No delay, forbearance or neglect in the enforcement of any of the conditions of this Agreement or any rights or remedies hereunder shall constitute or be construed as a waiver thereof. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

21. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which counterparts together shall constitute but one and the same instrument. Legible facsimile copies, electronically scanned copies and photocopies of documents signed by either party are deemed to be equivalent to originals.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed under seal by its duly authorized signatory(ies) on the date first written above.

SELLER:

ESSEX COUNTY GREENBELT
ASSOCIATION, INC., a Massachusetts
nonprofit corporation

BUYER:

CITY OF NEWBURYPORT, a municipal
corporation within Essex County,
Commonwealth of Massachusetts, acting through
its Water & Sewer Commissioners

By:

Katherine Bowditch
President

John Tomasz

Roger Jones

Sandy Friede

EXHIBIT A

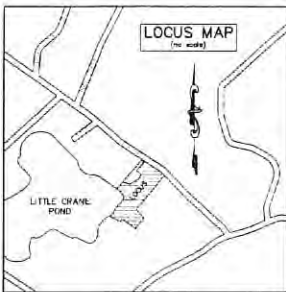
Plan of Subject Property

(see attached)

EXHIBIT B

Form of CR

(see attached)

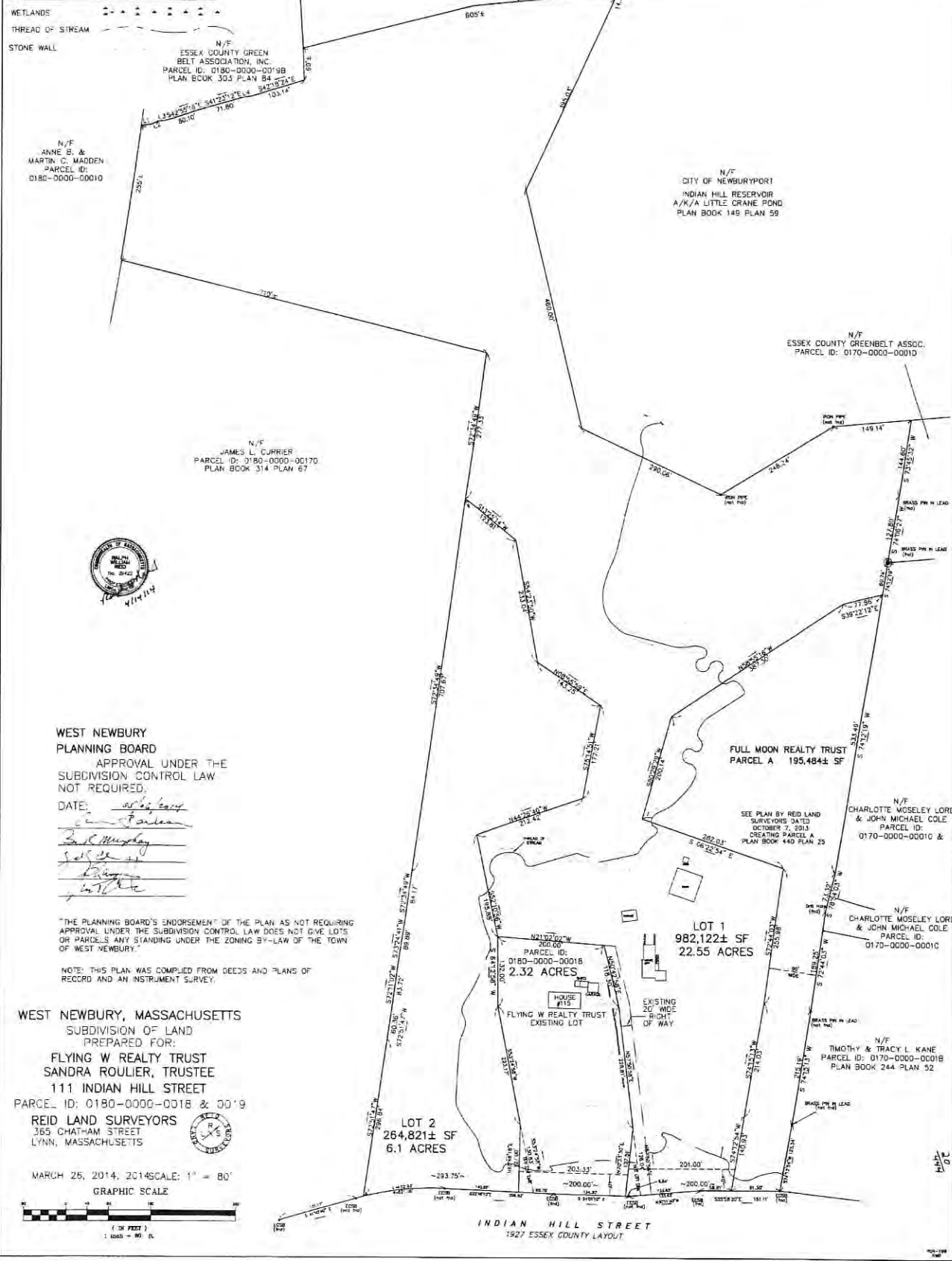


20
444

LINE	LENGTH	BEARING
L1	19.41'	S33°00'02"E
L2	14.70'	S50°26'24"E
L3	12.95'	S28°24'18"E
L4	16.73'	S33°59'33"E

PLAN BOOK 444 PLAN 20
 ESTABLISHED BY DEEDS 16-010
 DATE 11/11/11
 RECORDED JULY 31 2014
 W. J. BOBOL
 REGISTER OF DEEDS

I CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.



WEST NEWBURY
 PLANNING BOARD
 APPROVAL UNDER THE
 SUBDIVISION CONTROL LAW
 NOT REQUIRED.
 DATE: 03/26/2014
 [Signatures]

"THE PLANNING BOARD'S ENDORSEMENT OF THE PLAN AS NOT REQUIRING APPROVAL UNDER THE SUBDIVISION CONTROL LAW DOES NOT GIVE LOTS OR PARCELS ANY STANDING UNDER THE ZONING BY-LAW OF THE TOWN OF WEST NEWBURY."

NOTE: THIS PLAN WAS COMPILED FROM DEEDS AND PLANS OF RECORD AND AN INSTRUMENT SURVEY.

WEST NEWBURY, MASSACHUSETTS
 SUBDIVISION OF LAND
 PREPARED FOR:
 FLYING W REALTY TRUST
 SANDRA ROULIER, TRUSTEE
 111 INDIAN HILL STREET
 PARCEL ID: 0180-0000-0018 & 0019
 REID LAND SURVEYORS
 365 CHATHAM STREET
 LYNN, MASSACHUSETTS

MARCH 25, 2014, 2014 SCALE: 1" = 80'
 GRAPHIC SCALE
 1" = 80' (1/4" = 20')

REID LAND SURVEYORS, INC. 2014

Address of Premises: 117 Indian Hill Street, West Newbury

GRANTOR: City of Newburyport
GRANTEE: Essex County Greenbelt Association, Inc.
FOR GRANTOR’S TITLE SEE: Essex County Registry of Deeds at Book [enter book], Page [enter page].

CONSERVATION RESTRICTION

The CITY OF NEWBURYPORT, a Massachusetts municipal corporation having an address of 60 Pleasant Street, Newburyport, Massachusetts 01950 (“City”), acting by and through its Board of Water and Sewer Commissioners (“BOWSC”) under G.L. c. 40, section 41, for their successors and assigns (“Grantor”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grant with QUITCLAIM COVENANTS to ESSEX COUNTY GREENBELT ASSOCIATION, INC., a Massachusetts non-profit corporation having an address of 82 Eastern Avenue, Essex, Massachusetts 01929, its permitted successors and assigns (“Grantee”), for no consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on land located in West Newbury, Massachusetts containing 6.1 acres and shown as “Lot 2” on the plan recorded at Plan Book 444 Plan 20 at the Southern Essex District Registry of Deeds (“Premises”), which Premises is more particularly described in Exhibit A and shown in the attached sketch plan in Exhibit B, both of which are incorporated herein and attached hereto.

I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (“conservation values”).

The conservation values include the following:

- A. Open Space Protection.** The Premises contributes to the protection of the scenic and natural character of West Newbury and the protection of the Premises will enhance the open-space value of these and nearby lands. The Premises abuts already-conserved land, including watershed land owned by the Grantor, and the Indian Hill Reservation owned by the Grantee.

- B. Water Supply Protection.** The Premises is mapped by the Massachusetts Dept. of Environmental Protection as Zone A and C watershed areas of the Indian Hill Reservoir, which supplies drinking water for the City of Newburyport and the Town of West Newbury; the protection of the Premises is critical to maintaining the public drinking water supply.
- C. Wetlands and Waterways.** A stream and wetlands on the Premises provide valuable habitat for a diverse array of species as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Section 40 of Chapter 131 of the Massachusetts General Laws). Wetlands on the Premises are mapped as being within the top 50% of areas with the highest ecological integrity in the Commonwealth by the UMass Conservation Assessment and Prioritization System (CAPS).
- D. Climate Change Resilience.** The Premises scored Above Average and Far Above Average Resilience by The Nature Conservancy's Resilient Land Mapping Tool, which scores reflect areas of land where high microclimate diversity and low levels of human modification provide species with the conditions they will need to persist and adapt to a changing climate.
- E. Consistency with Clearly Delineated Federal, State, or Local Governmental Conservation Policy.** The protected Premises furthers government policy and goals to protect and preserve open space, habitat, natural resources, passive recreational opportunities and scenic values, as enumerated by (1) the Grantor's 2017 Master Plan adopted by the Newburyport City Council and Planning Board, including specifically the four goals listed in Chapter 8 of such Master Plan, (2) the 2020 Newburyport Open Space and Recreation Plan, including specifically Goal 1 to protect lands of public conservation and recreational interest to provide essential wildlife habitat and drinking water protection.
- F. Baseline Documentation Report.** These and other conservation values of the Premises, as well as its current uses and state of improvement, are described in a Baseline Documentation Report ("Baseline Report") prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, (ii) is intended to fully comply with applicable Treasury Regulations, and (iii) is intended serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

- A. Prohibited Acts and Uses.** Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

 - 1. Constructing, placing or allowing to remain any temporary or permanent building, structure, facility, or improvement, including but not limited to tennis courts, landing strips, mobile homes, swimming pools, asphalt or concrete pavement, signs, fences, billboards or other advertising displays, antennae, utility poles, towers, solar panels, solar arrays, conduits, lines

or other temporary or permanent structures, facilities, or improvements on, above or under the Premises;

2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
3. Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
4. Cutting, removing or otherwise destroying native trees, grasses or other vegetation;
5. Planting, broadcasting, placement, disposal, transfer, destruction, composting, dumping, or otherwise preventable introduction of "invasive" plant species or any other nuisance or disease carrying species, as defined in *A Guide to Invasive Plants in Massachusetts* (Somers P. et al. 2006) or as amended or contained in a similar professionally acceptable publication available in the future;
6. Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
7. Use, parking or storage of vehicles including cars, trucks, motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
8. Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
9. The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation as defined in Section 2031(c) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder or any successor statute or regulation;
10. The disruption, removal, or destruction of the stone walls or granite fence posts on the Premises;
11. Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions to Prohibited Acts and Uses. The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

1. Vegetation Management. The selective minimal removal, pruning and cutting of vegetation to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises.

2. Invasive Species Management. The removal of non-native or invasive species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
3. Composting. The stockpiling and / or composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream.
4. Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species of flora or fauna, including selective planting of native trees, shrubs and plant species.
5. Passive Recreational Activities. Any and all recreational activities that do not materially alter the surface of the Premises or require any other development of the land (other than as permitted under Section II(B) herein), do not degrade environmental quality and do not involve the use of motors or motorized vehicles (other than power-driven mobility devices whose accommodation may be required in accordance with the Americans with Disabilities Act and similar legislation), such as, but not limited to, walking, jogging, hiking, snowshoeing, cross-country skiing, and hunting (collectively, "Passive Recreational Activities").
6. Trails. Maintaining and constructing Passive Outdoor Recreation (as defined herein) trails as follows:
 - a. *New Trails*. With prior approval of the Grantee, constructing new trails, provided that any construction minimizes impact to water resources.
 - b. *Trail Features*. With prior approval of the Grantee, constructing bog bridging, boardwalks, footbridges, railings, steps, culverts, benching, cribbing, contouring, or other such features, together with the use of motorized equipment to construct such features;
7. Signage: Installing, maintaining, and replacing a minimal number of signs with respect to hunting, trespass, trail access, identity and address of occupants, sale of the Premises, the location of boundary lines, the Grantee's interest in the Premises and the protected conservation values, permitted and prohibited uses, and other regulations with respect to public use; interpretive, informational or other similar signs designed to enhance public use.
8. Forestry and Cutting. Conducting sound silvicultural uses of the Premises solely for the purposes of habitat or drinking water supply management, including the right to commercially (as such term may be defined from time to time in Section 1 of Chapter 61 of the Massachusetts General Laws, or successor law) sell forest products that result from said management activities (hereinafter, "Forestry Activities"), provided that any such Forestry Activities are carried out pursuant to a Forest Stewardship Plan. All Forestry Activities shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester. Before any Forestry Activities occur on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (hereinafter, "DCR") or appropriate successor agency, and to any other required state agencies for their approval. The Forestry Plan shall:

- a. be prepared by a forester licensed through DCR and shall follow the “Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans” (as such guidelines may be amended by DCR or its successor agency) and such statutes, regulations and directions in effect at the time of the approval of said Forest Stewardship Plan; and
 - b. include provisions designed to comply with the recommended activities and guidelines and required best management practices established in the Massachusetts Forestry Best Management Practices Manual (Catanzaro, Fish & Kittredge, University of Massachusetts, Amherst & DCR; 2013) and subsequent versions as may be approved by the Forestry Bureau (hereinafter the “Forestry BMPs”); and
 - c. include a certification that the Forest Stewardship Plan complies with the terms of this Conservation Restriction; and
 - d. be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional Forestry Activities are desired.
 9. Drinking Water Supply Pipeline. With prior notice to Grantee, constructing an above- or below-ground drinking water supply pipeline to bring water from the Indian Hill Reservoir to the Artichoke Reservoir, provided the construction of the pipeline seeks to minimally impact the Conservation Values of the Premises, and that Grantor restores the Premises in accordance with Paragraph 11 below.
 10. Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
 11. Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and native vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and native vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
 12. Other Activities. Such other activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights or, as applicable, are included in an approved Forest Stewardship Plan, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.
- C. Best Management Practices.** Prior to exercising any right reserved by Grantor under Section II, Paragraph B that may result in more than *de minimis* surface alterations, the Grantor shall consult, if available, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency such as the Dept. of Conservation and Recreation (DCR) or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

- D. Permits, Regulations, Laws.** The exercise of any right reserved by Grantor under Section II, Paragraph B shall be in compliance with then-current building, zoning, planning, and conservation regulations, bylaws, or ordinances applicable to the Premises, the Wetlands Protection Act (MGL Chapter 131, Section 40), and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth of Massachusetts takes any position whether such permit should be issued.
1. Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.
 2. Grantee agrees to use reasonable diligence to respond to Grantor's request within 60 days of delivery. Grantee's failure to respond within the sixty (60) calendar day period shall be deemed a denial of the request (hereinafter, a "Deemed Denial"). A Deemed Denial is not final or binding on Grantee, and Grantor may submit the same or a similar request for approval.

III. LEGAL RIGHTS AND REMEDIES OF THE GRANTEE

- A. Legal and Injunctive Relief.** The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.
- B. Reimbursement of Costs of Enforcement.** Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.
- C. Boundary Disputes.** In the event of a dispute over the boundaries of the Conservation Restriction, Grantee shall have the right to require Grantor, at its sole expense, to commission a survey and / or have the boundaries of the Premises permanently marked.
- D. Non-Waiver.** Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to

enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

- E. Disclaimer of Liability.** By acceptance of this Conservation Restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.
- F. Acts Beyond the Grantor's Control.** Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.
- G. Actions to Prevent or Remedy Violations.** The Grantee shall have the right to take appropriate actions to prevent, abate, or remedy violations of this Conservation Restriction, including violations by non-parties.

IV. ACCESS BY THE GRANTEE

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines. The Grantee shall have the right to erect and from time to time replace, at appropriate locations near the boundaries of the Premises, suitable signs identifying the Grantee as the holder of this Conservation Restriction.

V. EXTINGUISHMENT

- A. Termination only by Judicial Proceeding and Grantee's Right to Recover Proportional Value.** If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this Restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Commonwealth of Massachusetts Secretary of the Executive Office of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, which extinguishment or release must be accomplished by judicial proceedings in a court of competent jurisdiction, then Grantees, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.
- B. Proceeds.** Grantor and Grantee agree that the grant of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction bears to the value of the

unrestricted Premises at that time and represents all land development rights associated with the Premises, except as such rights may have been specifically retained pursuant to this Conservation Restriction. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

- C. **Grantor/Grantee Cooperation Regarding Public Action.** Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Paragraph B above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than a fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

- A. **Running of the Burden.** The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable in perpetuity against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises, by the Grantee, its successors and assigns acting by and through its duly designated officers, directors, employees or agents as holders of this Restriction.
- B. **Execution of Instruments.** The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.
- C. **Assignability; Running of the Benefit.** The benefits of this Conservation Restriction shall run to the Grantee, shall be deemed to be in gross and shall not be assignable by the Grantee, except the Grantee and its successors and assigns shall have the right to assign all or a portion of its right, title and interest hereunder to a "Qualified Organization" as defined in Section 170(h)(3) of the Internal Revenue Code provided that such assignee shall also be an eligible grantee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, that such assignee is not an owner of the fee in the Premises, and provided further that, as a condition of such assignment, the assignee is required to hold this Conservation Restriction and enforce its terms for conservation purposes and ensure that the purposes of this Conservation Restriction continue to be carried out. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

- A. **Reference to Conservation Restriction in Future Deeds and Required Notification of Transfers.** The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which divests any interest in all or a portion of the Premises, including any leasehold interest or option, and to notify the Grantee in writing not less than thirty (30) days prior to the execution of such transfer. Failure to do any of the above

shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

- B. Termination of Rights and Obligations.** The Grantor shall not be liable for violations occurring after their ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within thirty (30) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title to, any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Southern Essex District Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Southern Essex District Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: City of Newburyport
City Hall
60 Pleasant Street
Newburyport, MA 01950
Attn: Board of Water and Sewer Commissioners

To Grantee: Essex County Greenbelt Association, Inc.
ATTN: Director of Stewardship
82 Eastern Ave.
Essex, MA 01929
Phone: 978-768-7241

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

- A. Controlling Law.** The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Severability.** If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.
- D. Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. AFFIRMATIVE COVENANTS OF THE GRANTOR

- A. Payment of Taxes.** The Grantor shall pay before delinquency all taxes, assessments, betterments, liens, fees and charges levied on or assessed against the Premises by any federal, state, or local government authority or other competent authority or entity (collectively "taxes"), and shall furnish the Grantee with satisfactory evidence of payment upon request.
- B. Subordination of Mortgage.** The Grantor attests that there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises

- C. **Adverse Possession.** The Grantor represents and warrants that to the best of his knowledge no person has occupied or used the Premises without the Grantor's permission or has openly claimed ownership of the Premises as against the Grantor or the Grantor's predecessors in title or has conducted continuous activities or uses on the Premises (such as, but not limited to, logging, camping or similar uses). The Grantor agrees that if any such activity is observed now or in the future, the Grantor shall immediately notify the Grantee and shall cooperate with the Grantee to notify such persons of their wrongful entry onto the Premises.

XIV. MISCELLANEOUS

- A. **Pre-existing Public Rights.** Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.
- B. **Homestead.** The Grantor attests that there is no residence on or abutting the Premises (including exclusions) that is occupied or intended to be occupied as a principal residence by a spouse, former spouse, or children of the grantor, or a spouse, former spouse, or children of a beneficiary of the trust, if Premises is owned by a trust.
- E. **Representations of the Grantee.** The Grantee represents that it is a not for profit corporation, that it has a perpetual existence, that it is organized and operated for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and for other charitable, scientific and educational purposes, that it has both the necessary funds and commitment to hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms, that it is a "Qualified Organization" as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and that it is an eligible donee of a conservation restriction as set forth in Chapter 184, Section 32 of the General Laws of Massachusetts, as amended.
- F. **Prior Encumbrances.** This Conservation Restriction shall be in addition to and not in substitution of any other restrictions or easements of record affecting the Premises.
- G. **Signature Pages and Exhibits.** Attached hereto and incorporated herein by reference are the following:

Grantor [*If Grantor is a Trust – attach Trustee's Certificate*]

Grantee Acceptance

Approval by City Council

[*Enter any other applicable signatures or certifications*]

Approval of the Secretary of Energy and Environmental Affairs.

Exhibit A: Legal Description of Premises

Exhibit B: Sketch Plan of Premises

[*Applies to CPA purchases*]Exhibit C: Town or City Vote

[*Enter additional Exhibits, Addendums, Appendices, Management Agreements, votes, grant agreements, exclusions, etc...*]

WITNESS our hand and seal this ____ day of _____, 2021,

We, the undersigned, being a majority of the Board of Water and Sewer Commissioners of the City of Newburyport, Massachusetts ("Board"), hereby certify that at a public meeting duly held on _____, 2021, the Board voted to grant the foregoing Conservation Restriction to Essex County Greenbelt Association, Inc. pursuant to G.L. c. 40, section 41, and G.L. c. 184, section 32, and do hereby grant the foregoing Conservation Restriction.

CITY OF NEWBURYPORT,
By its Board of Water and Sewer Commissioners

John Tomasz, Chair

Roger Jones, Commissioner

Sandy Friede, Commissioner

COMMONWEALTH OF MASSACHUSETTS
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared John Tomasz, Roger Jones and Sandy Friede, as the members of the City of Newburyport Board of Water and Sewer Commissioners, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that they signed it voluntarily for its stated purposes, as the City of Newburyport Board of Water and Sewer Commissioners.

Notary Public
My Commission expires:

APPROVAL BY THE MAYOR OF THE CITY OF NEWBURYPORT

I, the undersigned Mayor of the City of Newburyport ("City"), hereby approve the grant of the foregoing Conservation Restriction from the City's Board of Water and Sewer Commissioners to Essex County Greenbelt Association, Inc. in the public interest pursuant to G.L. c. 184, section 32.

CITY OF NEWBURYPORT

Donna D. Holaday, Mayor

COMMONWEALTH OF MASSACHUSETTS
Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Donna D. Holaday, as the Mayor of the City of Newburyport, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as the Mayor of the City of Newburyport.

Notary Public
My Commission expires:

ACCEPTANCE OF GRANT

This Conservation Restriction from the City of Newburyport, acting by and through its Board of Water and Sewer Commissioners, was accepted by Essex County Greenbelt Association, Inc. this _____ day of _____, 2021.

ESSEX COUNTY GREENBELT ASSOCIATION, INC.

By: _____
Name: Katherine Bowditch
Title: President
Hereunto duly authorized

By: _____
Name: Kent Wosepka
Title: Treasurer
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Katherine Bowditch, as President of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Essex County, SS.

On this _____ day of _____, 2021, before me, the undersigned Notary Public, personally appeared Kent Wosepka, as Treasurer of Essex County Greenbelt Association, Inc., proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by federal or state governmental agency, oath or affirmation of credible witness, personal knowledge of the undersigned, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purposes, as President of Essex County Greenbelt Association, Inc.

Notary Public
My commission expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from the City of Newburyport, acting by and through its Board of Water and Sewer Commissioners to Essex County Greenbelt Association, Inc. has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2021

Kathleen A. Theoharides
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this . day of _____, 2021, before me, the undersigned notary public, personally appeared Kathleen A. Theoharides, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description of Premises

117IndianHill_CRFORMforPS_4.5.21

EXHIBIT B

Reduced Copy of Plan of Premises

For official full size plan see Southern Essex District Registry of Deeds Plan Book 444 Plan 20.



20
444

LINE	LENGTH	BEARING
L1	19.41'	S33°00'02"E
L2	14.70'	S50°26'24"E
L3	12.95'	S28°24'18"E
L4	16.73'	S33°59'33"E

PLAN BOOK 444 PLAN 20

ESSEX COUNTY DEPT. OF PUBLIC WORKS
DEPT. OF PUBLIC WORKS

Revised July 21, 2014.

Surveyor
G. J. Gagnier
Registered Professional Surveyor

I CERTIFY THAT THIS PLAN WAS PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

WETLANDS
THREAD OF STREAM
STONE WALL

N/F ANNE B. & MARTIN C. MAGDEN
PARCEL ID: 018C-0000-00010

N/F ESSEX COUNTY GREEN BELT ASSOCIATION, INC.
PARCEL ID: 0180-0000-00198
PLAN BOOK 303 PLAN 84

N/F ESSEX COUNTY GREEN BELT ASSOCIATION, INC.
PARCEL ID: 0060-0000-00298

N/F JOHN C. & CAROL K. ELWELL
PARCEL ID: 0060-0000-00180

N/F CITY OF NEWBURYPORT
INDIAN HILL RESERVOIR
A/K/A LITTLE CRANE POND
PLAN BOOK 149 PLAN 59

N/F ESSEX COUNTY GREENBELT ASSOC.
PARCEL ID: 0170-0000-00010

N/F JAMES L. CURRIER
PARCEL ID: 0180-0000-00170
PLAN BOOK 314 PLAN 67



WEST NEWBURY PLANNING BOARD
APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED.

DATE: 05/16/2014
G. J. Gagnier
S. K. Murphy
J. J. ...
C. ...

"THE PLANNING BOARD'S ENDORSEMENT OF THE PLAN AS NOT REQUIRING APPROVAL UNDER THE SUBDIVISION CONTROL LAW DOES NOT GIVE LOTS OR PARCELS ANY STANDING UNDER THE ZONING BY-LAW OF THE TOWN OF WEST NEWBURY."

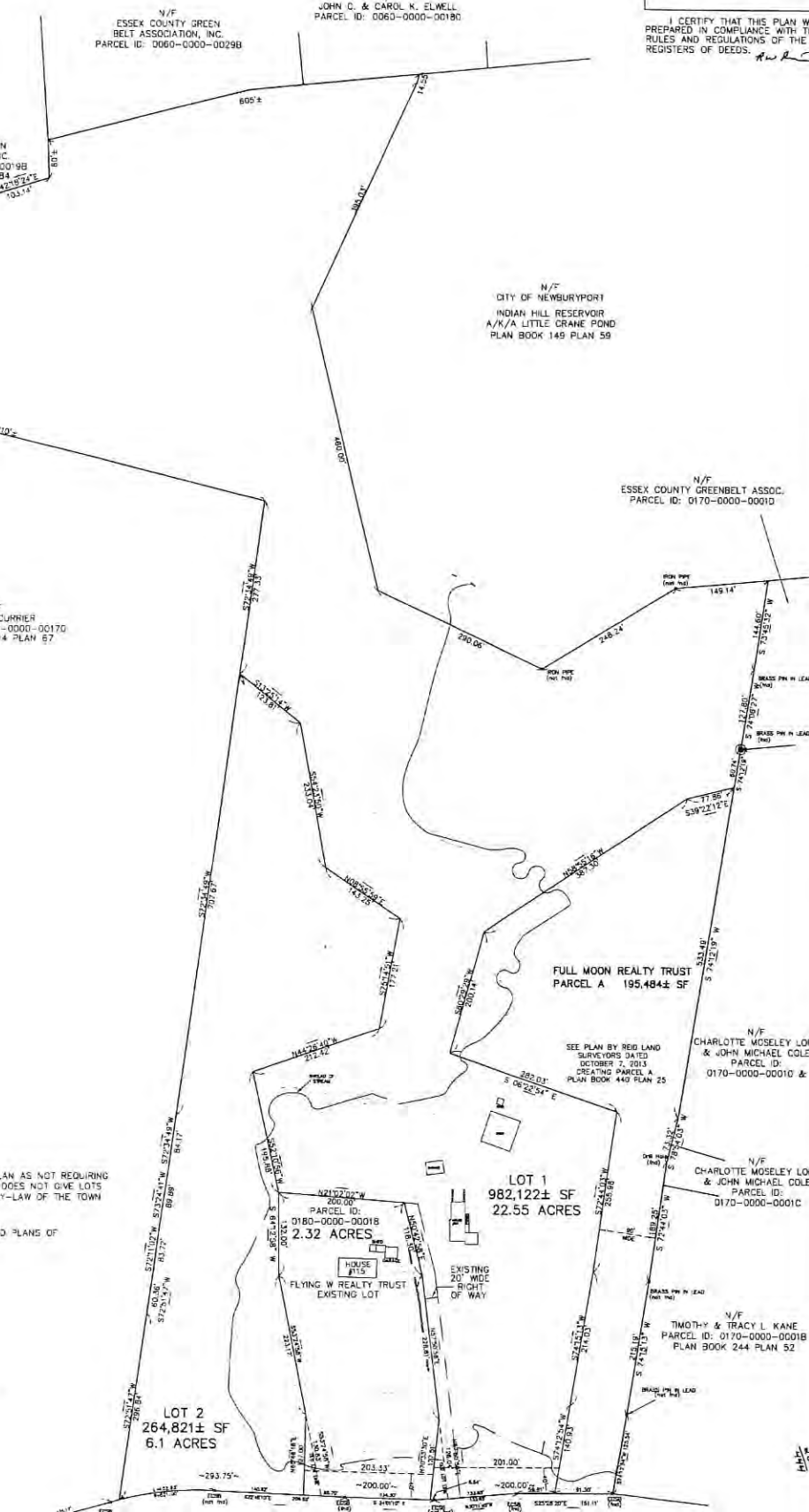
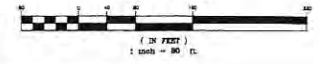
NOTE: THIS PLAN WAS COMPILED FROM DEEDS AND PLANS OF RECORD AND AN INSTRUMENT SURVEY.

WEST NEWBURY, MASSACHUSETTS
SUBDIVISION OF LAND
PREPARED FOR:

FLYING W REALTY TRUST
SANDRA ROULIER, TRUSTEE
111 INDIAN HILL STREET
PARCEL ID: 0180-0000-0018 & 0019

REID LAND SURVEYORS
365 CHATHAM STREET
LYNN, MASSACHUSETTS

MARCH 26, 2014, 2014 SCALE: 1" = 80'
GRAPHIC SCALE



INDIAN HILL STREET
1927 ESSEX COUNTY LAYOUT

PLAN 20



CITY OF NEWBURYPORT FY 2021

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

APR -6 PM 3:03

Department: Mayor's Office

Submitted by: Donna D. Holaday, Mayor

Date Submitted: 4/12/2021

Transfer From:

Account Name:	HWY STREET LIGHTS	Balance:	\$ 105,919.92
Account Number:	01421002-52103	Category:	\$ 353,536.70
Amount:	\$2,646.00	Trans I/O:	\$ -

Why Funds Are Available:

A surplus is anticipated at year-end due to net metering credit billing adjustments that have reduced streetlight electricity costs for FY2021.


Transfer To:

Account Name:	ESSEX NORTH SHORE TECH SCHOOL	Balance:	\$ -
Account Number:	01398002-53202	Category:	\$ -
Amount:	\$2,646.00	Trans I/O:	\$ -

Why Funds Are Needed:

A supplemental budget was done to account for higher than anticipated enrollment, however the final tuition costs came in \$2,646 higher. The amount can vary based on transportation costs and any additional services that are needed.

Donna D. Holaday, Mayor:



Date:

4/6/21

Ethan R. Manning, Auditor:



Date:

4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



CITY OF NEWBURYPORT FY 2021

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

2021 APR 13 PM 3:03

Department: Assessor's Office

Submitted by: Jill Brennan, City Assessor

Date Submitted: 4/12/2021

Transfer From:

Account Name:	Overlay Surplus Account	Balance:	\$ -
Account Number:	01-35200	Category:	\$ -
Amount:	\$99,010.00	Trans I/O:	\$ -

Why Funds Are Available:

Overlay funds that have been reserved for real estate and personal property tax abatements which are no longer required are declared surplus by the City Assessor. Overlay surplus may then be appropriated by the legislative body for any lawful purpose.

Transfer To:

Account Name:	ASR Revaluation	Balance:	\$ -
Account Number:	01141002-53002	Category:	\$ -
Amount:	\$99,010.00	Trans I/O:	\$ -

Why Funds Are Needed:

Please see attached memo.

Donna D. Holaday, Mayor:

Donna D. Holaday

Date:

4/6/21

Ethan R. Manning, Auditor:

Ethan R. Manning

Date:

4/6/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



City of Newburyport

OFFICE OF THE ASSESSOR

City Hall
60 Pleasant Street
Newburyport, MA 01950
978-465-4403

To: President and Members of the Newburyport City Council

From: Jill Brennan, City Assessor

Date: April 6, 2021

Subject: Revaluation Transfer from Overlay Surplus

Every five years, the Bureau of Local Assessment (BLA) conducts a thorough review of the City's revaluation program and assessments; this so-called "certification" process consists of, but is not limited to, a data quality review, a statistical ratio studies review, and a valuation review to ensure that proper appraisal methodology was utilized while uniformly and equitably applied to all property.

In order to meet the certification requirements, municipalities typically contract with an outside appraisal company. The City issued an RFP and would like to start the revaluation program in the next several weeks during FY21. Any funds not spent in FY21 will be encumbered for FY22 when the project is set to be completed.

The amount requested is contractual and broken down as follows:

Person Property	\$24,810
Real Estate	\$65,000
Cyclical inspections	\$ 9,200
Total Project Cost	\$99,010

This project is typically funded from overlay surplus, given that it occurs only once every five years. Overlay surplus are funds that were previously reserved for real estate and personal property tax abatements which are no longer required are declared surplus by the City Assessor (see attached). Overlay surplus may then be appropriated by the legislative body for any lawful purpose.

Thank you for your consideration.



CITY OF NEWBURYPORT

OFFICE OF THE ASSESSOR

JILL BRENNAN
CITY ASSESSOR

NEWBURYPORT CITY HALL

60 PLEASANT STREET

NEWBURYPORT, MA 01950

TEL: 978-465-4403

FAX: 978-462-8495

WWW.CITYOFNEWBURYPORT.COM

To: Ethan Manning, Finance Director

From: Jill Brennan, City Assessor

Date: April 1, 2021

Re: Transfer from Overlay

I hereby authorize the release of \$99,010 from Overlay Account to Overlay Surplus Account.



CITY OF NEWBURYPORT FY 2021

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST 6 PM 3:05

Department: Mayor's Office

Submitted by: Donna D. Holaday, Mayor

Date Submitted: 4/12/2021

Transfer From:

Account Name:	GEN EVENTS COORDINATOR	Balance:	\$ 5,000.00
Account Number:	01129001-51162	Category:	\$ 8,597.50
Amount:	\$4,000.00	Trans I/O:	\$ -

Why Funds Are Available:

A surplus is anticipated at year-end due to the temporary suspension of room/event rentals in municipal buildings. We anticipate this position being re-staffed in FY2022.

Transfer To:

Account Name:	AUD MISC SUPPLIES	Balance:	\$ -
Account Number:	01135004-55800	Category:	\$ -
Amount:	\$500.00	Trans I/O:	\$ -

Why Funds Are Needed:

This line item is used to fund supplies for the City Auditor's Office, such as check stock, printer toner, 1099 forms, other miscellaneous tax forms, etc. This account was reduced by \$500 by the City Council; we are requesting to restore that amount to pay expenses through year-end.

Transfer To:

Account Name:	GEN SUPPLIES-OFFICE	Balance:	\$ -
Account Number:	01129004-54200	Category:	\$ -
Amount:	\$3,500.00	Trans I/O:	\$ -

Why Funds Are Needed:

This line item is used to fund office supplies shared by all City Hall departments. The largest expense that comes out of this line item is paper, which is purchased in bulk. This account was previously funded at \$7,000, however for FY21 was reduced by \$4,500 by the City Council. Funds are needed to pay to cover expenses through year-end.

Donna D. Holaday, Mayor:



Date:

4/16/21

Ethan R. Manning, Auditor:



Date:

4/16/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



CITY OF NEWBURYPORT FY 2021

RECEIVED
CITY CLERK'S OFFICE
NEWBURYPORT, MA

TRANSFER/APPROPRIATION REQUEST

Department: Mayor's Office

Submitted by: Donna D. Holaday, Mayor

Date Submitted: 4/12/2021

Transfer From:

Account Name: RRFA - Paid Parking Fund Balance: \$ 993,790.59

Account Number: 2739-59610 Category: \$ -

Amount: \$5,550.00 Trans I/O: \$ -

Why Funds Are Available:

This fund is a receipts reserved for appropriation account. Funding sources include parking meter collections, violations and permits generated from the Downtown Paid Parking Program.

Transfer To:

Account Name: PKG PART-TIME ENFORCEMENT OFF Balance: \$ 75,922.25

Account Number: 01293001-51166 Category: \$ 99,721.02

Amount: \$4,500.00 Trans I/O: \$ -

Why Funds Are Needed:

Additional funding is needed for the newly settled collective bargaining agreement between the City of Newburyport and Teamster's Parking Enforcement Officers Local #170 retroactive to July 1, 2020. See attached memo and tentative agreement.

Transfer To:

Account Name: PKG CLOTHING ALLOWANCE Balance: \$ 205.53


Account Number: 01293001-51405 Category: \$ 99,721.02

Amount: \$1,050.00 Trans I/O: \$ -

Why Funds Are Needed:

Additional funding is needed for the newly settled collective bargaining agreement between the City of Newburyport and Teamster's Parking Enforcement Officers Local #170 retroactive to July 1, 2020. See attached memo and tentative agreement.

Donna D. Holaday, Mayor:



Date:

4/16/21

Ethan R. Manning, Auditor:



Date:

4/16/21

Sponsor: Charles F. Tontar, Councillor At-Large

City Council Approval:



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4413 • (978) 465-4402 (FAX)
WWW.CITYOFNEWBURYPORT.COM

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: April 6, 2021
Subject: Teamsters Union Local 170 Parking Enforcement Officers FY21 – FY23

The Administration has agreed to terms for a new, three-year collective bargaining agreement with the Teamster Union Local 170 Parking Enforcement Officers Subgroup of Professional/ Administrative/ Technical Collective Bargaining Unit. The contract would go into effect retroactively from July 1, 2020 through June 30, 2023, subject to appropriation of funding for the first year of the contract by the City Council. The Local 170 voted to ratify the terms of this agreement on March 24, 2021.

Included with this memo is a transfer request that appropriates funding for the first year of the contract by the City Council. Also included with this memo is the tentative agreement that outlines the terms and changes in the new agreement. A copy of the previous contract which expired on June 30, 2020 is available on the Human Resources website of the City Website: <https://www.cityofnewburyport.com/human-resources/pages/union-contractsexpired>. The Administration worked diligently and collaboratively with the Local 170 to agree to terms for a new contract.

My staff, including Chief of Staff Matt Coogan and Finance Director Ethan Manning, are available if you require any additional information regarding information on the appropriation request or terms of the new contract.

Thank you for your consideration.

CITY OF NEWBURYPORT
PARKING ENFORCEMENT OFFICERS
TENTATIVE AGREEMENTS

March 24, 2021

Article XII Wages

Year	Starting Rate	1 Year Service
FY 2021	\$15.90	\$17.65
FY 2022	\$16.32	\$18.07
FY 2023	\$16.74	\$18.49

Employees who have been members of the bargaining unit for at least one full year shall receive a \$1.75/ hour rate increase.

Employees shall receive premium pay for working extended seasonal hours between 5-8pm of an additional \$2.75 an hour.

Article VIII - Hours of Work

Section 1: Holiday Pay

If an employee works a holiday listed in this agreement, that employee will be paid time and one half (1 1/2) of their hourly rate for all hours worked on that holiday.

Article XIV Miscellaneous

Section 1. Clothing Allowance

Increase annual clothing allowance to \$350 from \$200.

New Section 4 - Call-in Pay

In the case that the parking enforcement officer is called in for unscheduled maintenance of a parking kiosk, such union member will be paid a 2-hour minimum of hourly pay for getting called in.

Any hours worked after the first two hours shall be paid at the employee's regular rate.

This section memorializes existing practice.

CITY OF NEWBURYPORT
PARKING ENFORCEMENT OFFICERS
TENTATIVE AGREEMENTS

New Section 5 - Credit Union

The City agrees to deduct certain amounts each week from the wages of those employees who shall have given the City written authorization to make such deductions. The amounts so deducted shall be remitted to the New England Teamsters Federal Credit Union or personal bank of the employee once each week. The town shall not make deductions and shall not be responsible for remittance to the New England Teamsters Federal Credit Union or personal bank for any deductions for those weeks in which the employee's earnings shall be less than the amount authorizes for deduction.

New Section 6 - Personal Protective Equipment (PPE)

As a result of the COVID-19 pandemic, The City of Newburyport agrees to provide, at no cost to all bargaining unit employees, all personal protective equipment (PPE), personal sanitizing agents, and any other materials to safeguard the health and well-being of the bargaining unit members, as directed by or set forth in safety guidelines by the Center for Disease Control (CDC), the Massachusetts Department of Public Health (DPH) and/or any other state or federal regulating agency.

In the case of future public health crisis that would affect the operations of the parking program and the working conditions of parking control employees, the City of Newburyport agrees to work with the union to provide any necessary accommodations to safeguard the health and wellbeing of the bargaining unit's members.

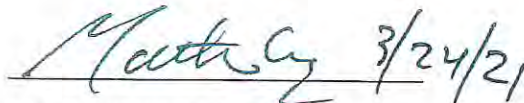
Article XXII Duration:

Change to read:

This Agreement shall become effective on July 1, 2020 and expires on June 30, 2023.

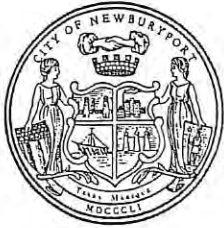
 3/24/21
James Marks, Business Agent

Teamster Local 170

 3/24/21
Matthew Coogan, Chief of Staff

City of Newburyport

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

April 12, 2021

THAT, The CITY COUNCIL of the City of Newburyport accepts with gratitude a gift from the Friends of Newburyport Trees (FoNT) in the amount of \$9,500 for the purpose of purchasing, planting and caring for city street streets. Said funds are deposited into the Tree Commission Gifts & Donations Account and accepted in accordance with M.G.L. Chapter 44, Section 53A.

Councillor Sharif I. Zeid

In City Council April 12, 2021:

Motion to refer to Budget & Finance by Councillor Zeid, seconded by Councillor Tontar. Roll call vote. 10 yes, 1 absent (JE). Motion passes.

Friends of Newburyport Trees

PO Box 1155

Newburyport, MA 01950

April 1, 2021

City of Newburyport

Attn: Ethan Manning

60 Pleasant Street

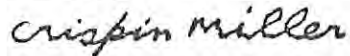
Newburyport, MA 01950

Dear Ethan,

It is with great pleasure that we at the Friends of Newburyport Trees (FoNT) donate \$9,500.00 to the Tree Commission for the purpose of purchasing, planting and caring for city street trees. This money comes from a variety of private and business donations. During these difficult times it is gratifying to have such an outpouring of public support.

Attached is the check for \$9,500.00. Please let me know if you have any questions.

Kind regards,



Crispin Miller

President, Friends of Newburyport Trees

978-771-2871

Cc: Connie Preston – Chair-Newburyport Tree Commission

Committee Items- April 26, 2021
Education Committee

1. COMM240_04_27_2020 Memo re: SOI Submission Info
2. COMM293_02_08_2021 Ltr. From Jane Snow

Educational background and rationale for the proposal for a building project at Newburyport High School

Our future vision for Newburyport High School is that it will provide learning spaces that promote innovation, creation, and student-driven learning; which includes learning environments that are technology rich, provide opportunities for students to pursue their passions, and enhance teacher and student capacity to imagine. Over the last couple of years, teachers have engaged in skills-based instruction and assessing while developing a vision for the Newburyport High School Graduate. Additionally, across the district teachers and programs are aligning practices with the commitments outlined in the 5-year strategic plan.

The efforts towards this vision conflicts with the high school's current learning spaces that were designed for more traditional methods of instruction. Since the high school was renovated, the greatest changes in education and the world have been in the area of STEM and as a result, we are preparing students for jobs that currently do not exist. By making the investment in STEM spaces and instruction we are providing every Newburyport High School student with the skills and tools that will allow them to develop collaboration, problem-solving, and innovation skills that are transferable across content areas. In the end, our students will be globally competitive.

Recognizing the ever changing work environment and global competition, the Newburyport Education Foundation (NEF) has collaborated with Newburyport Public School's vision to enhance STEM opportunities K-12 by building a multi-year campaign to help fund STEM education. This great community support began in 2016, the NEF built this effort from the ground up by starting with our youngest students at the Bresnahan School. They helped create one of the first elementary STEM lab learning spaces in this state. The NEF then continued their efforts by supporting renovation of the STEM learning environments at both the Molin Upper Elementary and the Nock Middle Schools. Through the renovation, NEF funding supported the tools, technology, and equipment needed for state of the art STEM instruction. Our students are now arriving at the high school with more accelerated STEM learning backgrounds and experiences. The MSBA Statement of Interest supports the continuation of those learning endeavors, by re-imagining teaching and learning within the STEM areas and beyond at Newburyport High School.

Flexible Space Possibilities:

Technology Innovation Space - designed to integrate technology into all curriculum and increase technology literacy for all NHS students.

Passive Solar wet lab - designed as an innovation space for real-world problem solving including global environmental issues, food stability, sailbot (instead of going off campus) and much more.

High Energy lab -innovation space that would have the capability of running high level experimentation such as spectroscopy of elements and gases

Math innovation lab - innovation space where ongoing hands-on projects could be constructed, built and stored temporarily

The building of STEM spaces through the renovation will provide us with the space requirements to apply for the state's Innovation Pathways Grants

- **Innovation Pathways are designed to give students coursework and experience in a specific high-demand industry, such as information technology, engineering, healthcare, life sciences and advanced manufacturing.**

Current Course Offerings	Possible Course Offerings
Science Courses:	
<p>General Science Offerings</p> <ul style="list-style-type: none"> ● Biology CP, Honors, AP ● Chemistry CP, Honors, AP ● Physics CP, Honors, AP <p>Current Electives</p> <ul style="list-style-type: none"> ● Organic Chemistry ● Environmental Science ● Astronomy ● Aquaponics ● Bioethics ● Anatomy and Physiology 	<p>Introduction to Electronics</p> <p>Modern Physics (Honors)</p> <p>Biomedical Pathway</p> <p>Marine Science</p> <p>Medical Assisting Pathway</p>
<p><u>Recently added due to partnership with NEF and as a result of STEM Proposal 2016*</u></p> <p>Organic chemistry* Environmental Field Studies* DE (20/21) Biotechnology* Survival Science* (new 20/21)</p> <p>DE - Dual enrollment through SNHU in 20/21</p>	
Technology/Engineering Courses:	
<p>Robotics</p> <p>Sailbot</p> <p>Programing for Game Design</p> <p><u>Recently added due to partnership with</u></p> <p><u>NEF Engineering in the 21st Century co-taught* DE Introduction Industrial Design</u></p>	<p>Multi-levels of Computer Science</p> <p>Second level Game Design Class</p> <p>Intro to Making (co-taught with Art</p> <p>Wearable Electronics</p> <p>Increase engineering course options</p> <p>Increased availability of higher level courses (currently most upper level classes only run once every 2-3 years)</p>
Mathematics courses:	
<p>General math offerings</p> <ul style="list-style-type: none"> ● Algebra ● Geometry ● Algebra II ● Pre-Calculus ● Calculus ● Statistics 	<p>Data Analysis/Introduction to Statistics to prepare underclassmen for the data analysis needed in a variety of</p> <p>Advanced science, history, and math courses</p> <p>Math Lab or other format for remediation purposes and tutoring</p> <p>Mathematical Modeling</p> <p>Applied mathematics</p>
Cross Curricular courses:	
<p>Engineering in the 21st Century* (Honors) - <i>Tech/Engineering and Science</i></p>	<p>Programming for Game Design - <i>Tech/Engineering and Math</i></p> <p>Intro to Making - <i>Tech/Engineering and Art</i></p> <p>Biostatistics - <i>Science and Math</i></p> <p>The Art of Mathematics - <i>Math and Art</i></p>

Statement of Interest Overview

The Statement of Interest is the tool that districts use to identify deficiencies and/or programmatic issues that exist within their schools. It is a signal to the Massachusetts School Building Authority that the district has identified a need or needs within its buildings and is interested in partnering with the MSBA on a school building project. The MSBA process is a competitive grant program in which SOIs submitted by districts across the commonwealth are compared with one another to determine which are the most urgent and needy.

There are two main programs available through the MSBA process. The Core Program is for full scale renovation and/or addition projects as well as new school construction. The Accelerated Repair Program (ARP) assists districts with the replacement of aging boilers, windows/doors and roofs. As its name indicates, the ARP is a more streamlined process aimed at correcting those issues more quickly.

Consideration has been given to submitting an SOI for the ARP to address the current roof issues at the high school, and thereby separating it from the lengthier process of the Core Program for the Science Wing Project. However, the MSBA only allows districts to submit one SOI per building per year and guidance for submission of an SOI for the ARP includes the following:

...a district should not submit an SOI for consideration in the ARP if:

- *the district plans a future construction project for MSBA participation going beyond roofs, doors/windows, and boilers for the school, or*
- *the district is reviewing facilities deficiencies to further identify its needs and priorities*

The issues with the high school roof are currently under control and funding still exists from an appropriation approved for maintenance and repairs of the roof a couple of years ago by the City Council. We should be able to manage through the next few years with those funds.

According to the MSBA website, they receive between 100 and 125 SOIs each year for inclusion in their Core Program. The number of districts that get invited into the program each year varies based on a number of factors including the MSBA's funding cap for that particular year, the nature and size of the projects that are deemed neediest, and the reimbursement rates of those districts invited into the program. Taking that into consideration along with the current state of the economy it is likely that acceptance into the Core Program will be a multi-year process.

MSBA Core Program

Approximate Timeline of SOI Process

- **Early January**-SOI submission period opens
- **January to April** (May this year)-Districts prepare and submit their SOIs
- **May to August**-MSBA staff evaluates SOIs for completeness and content
- **September & October**-MSBA staff and consulting engineers perform "Senior Study" visits as they deem necessary to gather more information about proposed projects. These visits are conducted on the site of the proposed project and typically take approximately two hours.
- **November**-Further evaluation of SOIs conducted
- **December**
 - MSBA staff make recommendations to MSBA Board of Directors regarding which districts to invite into the program
 - MSBA Board of Directors meets to discuss and approve recommendations
 - Districts receive invitation into the program

To:

School Committee Members

Education Committee

Feb 2, 2021

I listened to the Feb. 1st, SC meeting as I saw that the renaming of the Rupert A Nock Middle School was on the agenda. I listened and now the suggestion is for an open meeting to discuss this as it is “a teachable moment”. I am asking you not do that. It is not a teachable moment. It will hurt 2 families, not unify the city or bring us forward to being more understanding of others, our actions and our words. The norms 80 years ago were different than what they are now. To go back 80 yrs. and judge someone for an incident without truly knowing all the details is just as unacceptable as having a student asked to go to the back of the line. My heart breaks for both families.

Mr. Cullen, wrote an article about Mr. Cousins remarks at the celebration of Martin Luther King Jr.'s life. It appears Mr. Cousins did not state the name in his speech, but the author of the article was compelled to seek it out and use it in his article. Mr. Cullen stated “the action of Rupert Nock being complicit to overtly support racism by sending Frank's dad to the back of the line to be by himself and suffer the embarrassment and indignity simply for being black is wrong and unacceptable.” He judged what should happen as a result of it without being able to get all the details, as Mr. Nock is deceased. He suggested that his name be removed from the Middle School. In my opinion this lost its teachable moment when names were used.

Rather than perpetuating this, I would prefer the teachable moment be that Amanda Gorman, the nation's first ever youth poet laureate was asked to read her poem at the inauguration of President Joe Biden. If you missed it- here is the link: <https://www.cnn.com/videos/style/2021/01/20/amanda-gorman-youth-poet-laureate-full-poem-biden-capitol-inauguration-vpx.cnn> It was a powerful poem and her delivery of it was incredible. This is what we should be celebrating and discussing. Something that would help to bring unity and move us forward. A great inspiration for our youth. Below is a part from the poem that I was partial to:

Where a skinny Black girl
descended from slaves and raised by a single mother
can dream of becoming president
only to find herself reciting for one
And yes, we are far from polished
far from pristine
but that doesn't mean we are

striving to form a union that is perfect
We are striving to forge a union with purpose
To compose a country committed to all cultures, colors, characters and
conditions of man
And so, we lift our gazes not to what stands between us
but what stands before us
We close the divide because we know, to put our future first,
we must first put our differences aside
We lay down our arms
so we can reach out our arms
to one another
We seek harm to none and harmony for all

Another accomplishment that should be celebrated and discussed is that we just elected the first woman to be Vice President of the United States and by the way she is also a woman of color. This is another great teaching moment that should be celebrated. On Facebook there was a picture of Vice President Harris and on the side were pictures of past Presidents. Some were circled with notes under that them, slavery existed, woman couldn't have bank accounts, school segregation and so on. Yes, we have made some progress. I do not disagree that we still have work to do on racism and social injustice but feel our discussion should be on today and moving forward. I believe that will provide us with a much better outcome than looking back and assigning blame to people and things 80 yrs. in the past.

If down the road you decide to discuss having all the schools and fields that are named after people changed – then have that discussion. It should play no part in a discussion of ways to unify us and help move us forward in being more understand and kinder in our words and deeds.

Thank you for taking the time to read and consider my request.

Jane Snow

9 Coffin St

Committee Items-April 26, 2021
Public Utilities

APPT240_04_12_2021

William G. Creelman Water/Sewer Comm 04/30/2023

Removal from Committee Form

Instructions: Remit to rjones@cityofnewburyport.com; pbarker@cityofnewburyport.com; cgreen@cityofnewburyport.com by Wednesday, 5 PM preceding Council meeting

Committee Name: Committee on Public Utilities

Committee Chair: Tontar

	Measure Identifier	Measure Title	Amended in Committee? (if yes, attach final version)	Consent Agenda or Regular Agenda?
1.	APPT240_04_12_2021	Water/Sewer Commission	No	Consent
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				



CITY OF NEWBURYPORT
OFFICE OF THE MAYOR
DONNA D. HOLADAY, MAYOR

RECEIVED
CITY CLERK
APR 12 2021

60 PLEASANT STREET - P.O. BOX 550
NEWBURYPORT, MA 01950
978-465-4413 PHONE
978-465-4402 FAX

To: President and Members of the City Council
From: Donna D. Holaday, Mayor
Date: April 6, 2021
Subject: Appointment

I hereby appoint, subject to your approval, the following named individual as a member of the Water/Sewer Commission. This term will expire April 30, 2023.

William G. Creelman
129 Merrimac Street, Unit 5
Newburyport, MA 01950

129 Merrimac Street, Unit 5

Newburyport, MA 01950

April 6, 2021

Mayor Donna D. Holaday

Newburyport City Hall

60 Pleasant Street

Newburyport, MA 01950

RE: Board of Water and Sewer Commission

Dear Madam Mayor:

Enclosed please find my resume for your consideration for a position on the Board of the Water and Sewer Commission. I have been a resident of Newburyport for the past year, am retired and interested in becoming involved in the community and city government.

My professional background is in engineering and construction. In addition, I have served on many town boards when I lived in Concord, MA.

I would welcome the opportunity to explore the possibility of serving on the Board.

Thank you in advance for your consideration.

Sincerely,



William G. Creelman

(781) 389 0908

creelmanw@nadi.com

William Creelman
129 Merrimac Street #5
Newburyport, MA 01950
crelmanw@gmail.com

Objective: To obtain an owner's project management position utilizing my extensive construction experience both as a Construction Manager and an Owner's agent to add value to the employer.

Builder's Licenses: Boston (ABC), Cambridge and Arlington (All Classes)

Industry Organizations: Member of the Associated General Contractors of MA

Affiliations: Wentworth Institute of Technology

Current Member University Advisors

Corporator

Past Chairman, National Council

Past Chairman, Industrial Advisory Board Building Construction

Member of Two Capital Campaigns

Past Member of the WAA (Wentworth Alumni Association)

Established two Scholarship Funds

Town of Concord MA:

Member, Harvey Wheeler Community Center Building Construction

Member, Concord Elementary School Building Committee

Member, Concord Carlisle High School Building Committee (Ph 1, 2)

Member, Concord Free Public Library & Fowler Branch Library Building Committee

Member, Site Study Comm. to relocate Concord Municipal Light Plant & Public Works

Served 3 years on Concord Board of Appeals, Chairman for one year

Additional:

Past Contractor Member, Designer Selection Board, State of MA Chairman – 1 yr.

Director, Silpro Masonry Products, Ayer MA

Retired Captain – Massachusetts Army National Guard

Past Instructor, BAC

Board Member of Heading Home

Served on Property, Finance & Executive Committees for Heading Home

Board Member North Bennett Street School – Building & Finance Committees

Education:

Wentworth Institute of Technology

Associate Degree, Applied Technology – Building Construction Technology 1964

Northeastern University – Structural Engineering

Professional Experience:

ASPEN Group - June 2017 – November 2019

Served as Clerk of the Works at the Boston Homes, Dorchester, MA, a 27-unit building for severely handicapped residents.

3200 Washington, Boston MA, a 76-unit apartment complex completed with 11 affordable units.

BOND - January 2014 – May 2015

Hired as a consultant to assist with estimating, purchasing subs, & project management related assignments on an \$80M dormitory project at Boston University.

North Bennett Street School – April 2012 – December 2013

Hired as Owner's Representative/Clerk of the Works.

Participated in the selection of Construction Manager, Architect and various consultants on the project.

Oversaw design and construction of an 80,000 sf facility at 150 North Street, Boston MA.

The Project had a compressed 10 month schedule and a value of \$17M.

Creelman Construction Consulting – January 2009 – 2012

Formed my own construction consulting business working for owners, architects, & contractors assisting them with numerous construction issues.

AJ Martini Corporation – September 1995 – January 2009

Vice President/Director of Purchasing.

Negotiated and awarded approximately \$80M subcontracts each year.

Directed construction support group and supervised the estimating department.

Managed and supervised equipment division, Dartmouth Tool.

Visit sites as required to review schedule, subcontractor issues, & manpower requirements.

Member of the Executive Committee managing overall operations for the company.

R.L. Jeannotte Company - May 1993 – September 1995

Vice President/Project Manager

Completed approximately \$10M worth of construction per year and actively managed the estimating and field operations department.

Macomber Construction Company - July 1988 -- May 1993

Vice President

Started the Special Projects Division for the company and grew operations / revenue to approximately \$15Million with profitable operations.

Kennedy & Rossi - July 1987 – July 1988

Executive Vice President

Assisted in operations of the overall management of the \$30M Firm.

Creelman Coull - 1984 – July 1987

Principal

Developed and built a 52 Acre industrial park in Ayer MA. Creelman Coull was a merit based construction management firm.