

CITY OF NEWBURYPORT



IN CITY COUNCIL

December 14, 2020

ORDERED:

AN ORDER RELATIVE TO DISPOSITION AND FUNDING FOR REHABILITATION OF THE FORMER BROWN SCHOOL, AND PURCHASE AND DISPOSITION OF THE PROSPECTIVE CITY PROPERTY KNOWN AS LOT A-1 LOCATED AT 57 LOW STREET

WHEREAS, pursuant to votes by the City Council of the Newburyport City Council (the "City Council") in 1922 and 1974, the City of Newburyport (the "City") acquired by eminent domain the former George W. Brown School with a street addresses of 40-42 Milk Street and 99-101 Prospect Street Newburyport, Massachusetts, containing the land and all buildings and structures thereupon, as shown on the City of Newburyport's Assessors Map as Parcel ID Nos. 21-26 and 21-3 (altogether, the "Brown School Site," a map of which is attached to this Order as **Attachment A**); and

WHEREAS, in 2013, the City Council ordered that upon the removal from service as a public school of any portion of the Brown School Site, the City shall dedicate and hold permanently for public park and playground uses under the meaning of M.G.L. c. 45 an area of such site at least equal in size to the schoolyard then located on the southeasterly portion of the Brown School Site, including the mulched area for play equipment, the basketball court, and the so-called amphitheater (the "2013 Playground Order," a copy of which is attached to this Order as **Attachment B**); and

WHEREAS, in 2014, the Newburyport Youth Services department ("NYS") relocated to the Brown School Site from the former Elbridge G. Kelley School, located at 151 High Street (the "Former Kelley School"), and since that time NYS has operated there continuously within the gymnasium and the ground floor of the schoolhouse building, together, as the "Newburyport Rec Center"; and

WHEREAS, also in 2014, in determining that the Former Kelley School was surplus, and authorizing the Mayor to sell it, the City Council ordered that the proceeds from such sale be used, at the discretion of the Mayor, for either supplementing the School Department budget or capital improvements required at the Former Brown School necessary for its partial conversion as the Newburyport Rec Center (the "2014 Proceeds Order," a copy of which attached to this Order as **Attachment C**); and

WHEREAS, in 2016, pursuant to M.G.L. c. 40, § 3, and Newburyport Charter Section 4-5, the Newburyport School Committee voted to designate the Brown School Site as surplus property, no longer required by the School Department, with express reference to the 2013 Playground Order (the "2016 School Committee Order"); and

WHEREAS, in 2019, pursuant to M.G.L c. 40, § 15A, the City Council voted to accept to itself the care, custody, management, and control, for general municipal purposes, of the Brown School Site (the "2019 Acceptance Order," a copy of which is attached to this Order as **Attachment D**); and

WHEREAS, the Commonwealth of Massachusetts, acting through its Division of Capital Asset Management and Maintenance ("DCAMM") has offered to convey to the City, for general municipal purposes, an approximately 2.17-acre portion of that certain property known as 57 Low Street in Newburyport, Massachusetts, and described in a deed recorded with the Essex South Registry of Deeds in Book 3799, Page 270, which portion is depicted as "Lot A-1" on that plan entitled "57 Low Street Plan of Land Located in Newburyport, Massachusetts (Essex County) Prepared for City of Newburyport", dated June 3, 2019, prepared by Meridian Associates (the "Lot A-1 Plan", a copy of which is attached to this Order as **Attachment E**; and

WHEREAS, the City Council, acting on behalf of the residents of Newburyport, wishes to authorize the acquisition of Lot A-1 upon the condition that the rearward portion of Lot A-1 depicted as "Area of Conservation Restriction" on Exhibit A to the Restriction and Transfer of Control (the "Form of Restriction," a copy of which is attached to this Order as **Attachment F**), which Form of Restriction is hereby adopted by the Council pursuant to its vote under this Order, and thereby incorporated herein, be acquired for, held, and forever thereafter dedicated to open space and conservation purposes in accordance with the terms of the Restriction, and by its vote to thereby establish the City's "clear and unequivocal intent" under the meaning of *Smith v. City of Westfield*, 478 Mass. 49 (2017) to subject said Area of Conservation Restriction and the City's use thereof to the protections of Article 97 of the Amendments to the Massachusetts Constitution;

THEREFORE, IT IS HEREBY ORDERED THAT:

Brown School Site

- 1) Pursuant to M.G.L c. 40, § 15A, the City Council of the City of Newburyport hereby transfers to the Newburyport Youth Services department the care, custody, management, and control of the entire ground level of the buildings at the Brown School Site, which buildings include the gymnasium, for the specific municipal purposes of such department.
- 2) Further pursuant to M.G.L c. 40, § 15A, the City Council hereby affirms transfer to the Newburyport Parks Commission of the care, custody, management, and control of the schoolyard located on the southeasterly portion of the Brown School Site, including the mulched area for play equipment, the basketball court, and the so-called amphitheater, for public park and playground uses under the meaning of M.G.L. c. 45.
- 3) Further pursuant to M.G.L c. 40, § 15A, the City Council hereby continues to retain to itself the care, custody, management, and control of the all remaining portions of the Brown School, which shall remain for general municipal purposes, pursuant to the 2019 Acceptance Order, subject to future transfer by the City Council by two-thirds vote at of all its members.
- 4) The City Council hereby appropriates the entire balance of money located in Special Revenue Fund No. 2760 (Sale of Municipal Buildings), which, as of June 30, 2020, was the sum of Six-Hundred and Ninety-Three Thousand, Five-Hundred Dollars (\$693,500), to pay the costs for

repair, maintenance, and/or capital improvements at that portion of the Former Brown School transferred to NYS pursuant to Section 1 of this Order, such monies having been available since 2016 pursuant to the 2014 Proceeds Order.

- 5) The sum of one million dollars and no cents (\$1,000,000.00) is appropriated to pay the costs for repair, maintenance, and/or capital improvements at that portion of the Former Brown School transferred to NYS pursuant to Section 1 of this Order. Further, to meet this appropriation the Treasurer is authorized to borrow said amount under and pursuant to M.G.L c. 44, § 7(1), or pursuant to any other enabling authority, and to issue bonds or notes of the City therefore, and that the Mayor and the Treasurer are authorized to take any other action necessary or convenient to carry out this vote. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L c. 44, § 20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount. This bond order is conditioned upon complete plans being submitted to the City Council and approved by a super-majority vote prior to any such bond being issued.

57 Low Street, Lot A-1

- 6) The City Council hereby approves and authorizes the purchase of Lot A-1: (a) for open space and conservation purposes in accordance with the terms of the Form of Restriction as to that portion of Lot A-1 depicted in the Form of Restriction as "Area of Conservation Restriction", it being the express intent of the Council by its vote to subject the said "Area of Conservation Restriction" to the protections afforded under Article 97 of the Amendments to the Massachusetts Constitution, and provided further that the Newburyport Conservation Commission shall assume the care, custody, control and management of the Area of Conservation Restriction for the purposes set forth in MGL c. 40, § 89C, and subject to the protections afforded under said Article 97; and (b) for general municipal purposes as to the remainder of Lot A-1.
- 7) The sum of Two-Hundred and Twenty Thousand Dollars (\$220,000) is appropriated to pay the costs to purchase Lot A-1 pursuant to that certain Letter of Intent dated July 10, 2020, from Warren A. Madden of DCAMM to Mayor Donna D. Holaday. Further, to meet this appropriation The Treasurer is authorized to borrow the sum of under and pursuant to M.G.L c. 44, § 7(1), or pursuant to any other enabling authority, and to issue bonds or notes of the City therefore, and that the Mayor and the Treasurer are authorized to take any other action necessary or convenient to carry out this vote. Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L c. 44, § 20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.
- 8) Upon acquisition of Lot A-1, pursuant to M.G.L c. 40, § 15A, the City Council hereby authorizes transfer of care, custody, management, and control of such Lot A-1 as follows: (a) two-thirds ($\frac{2}{3}$) of the office space within the existing building (the "Existing Building") shall be assigned to the School Committee for use as School Department offices, and the remaining portion of such

office space at the Existing Building shall be assigned to the Parks Commission for use as offices by the Parks Department; (b) both garage bays at the Existing Building shall be assigned to the Parks Commission for use by the Parks Department; and (c) use of the parking area at Lot A-1 shall be shared by the School Department and Parks Department. As a condition of the assignment to the Parks Commission, all office and storage activities of the Parks Department at Atkinson Common shall cease, excepting solely (i) those office and storage activities directly related to caring for Atkinson Park itself and (ii) enclosed storage within the shed located within Atkinson Park.

Councillor Sharif I. Zeid, Ward 1

Councillor Jared J. Eigerman, Ward 2

Attachment A: Map of Brown School Site



Source: <https://mimap.mvpc.org/map/index.html?viewer=newburyport>

Attachment B: 2013 Playground Order

CITY OF NEWBURYPORT



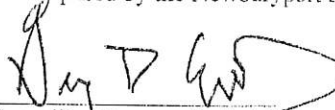
IN CITY COUNCIL

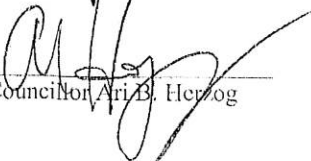
ORDERED:

DATE: September 30, 2013

THAT upon the sale, lease, or removal from service as a public school of any portion of the buildings and grounds of the G. W. Brown Early Elementary School (Map 21 – Parcels 3 and 26), the City of Newburyport shall dedicate and hold permanently for public park and playground uses under the meaning of Chapter 45 of the Massachusetts General Laws an area of such site that is at least equal in size to the school yard currently located on the southeasterly portion of the site, including the mulched area for play equipment, the basketball court, and the so-called amphitheater.

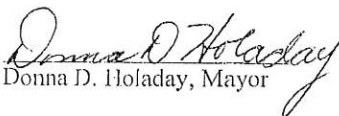
AND THAT this Order is subject to any and all votes as required by the Newburyport School Committee.

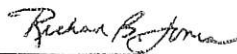

Councillor Gregory D. Earls


Councillor Ari B. Herzog

In City Council September 30, 2013

Motion to approve by Councillor Earls, seconded by Councillor Cameron. So voted.

Approve: 
Donna D. Holaday, Mayor

Attest: 
Richard B. Jones, City Clerk

Date: OCT 16 2013

ORIGINAL COUNCIL VOTE

CITY OF NEWBURYPORT



IN CITY COUNCIL

A TRUE COPY ATTEST

Rachel Benjamin
City Clerk
Newburyport, Massachusetts

ORDERED:

May 19, 2014

THAT pursuant to General Laws Chapter 40, Sections 15 and 15A the City Council of the City of Newburyport hereby designate the former Kelley School (*formally closed by the School Committee by vote of April 23, 2007, and now operating as the Newburyport Youth Services facility*) as surplus property, no longer needed by the City for such purposes or for other public purposes (*based upon the anticipated relocation of Newburyport Youth Services to the Brown School*), and further (*consistent with the April 7, 2014 vote of the School Committee*) that the Council hereby transfers the care, custody, management and control of said building and the land upon which it stands (*151 High Street, Assessors Map 35 Lot 161*) to the Mayor for the purposes of further conveyance, on such terms and conditions, and for such consideration, as the Mayor deems appropriate, provided that a condition of the sale or lease of said property shall be a duly recorded Preservation Restriction for the protection of the historic facades of said building, and provided that the City Council Planning and Development Committee shall have an opportunity to review and comment on the Request for Proposals (RFP) and Purchase and Sale (P&S) Agreement during the disposition process (including the minimum required bid and proposed purchase price, accordingly), and further that the proceeds from sale or lease of the property may be used, at the discretion of the Mayor, for either supplementing the School Department budget or for the purposes of funding capital improvements required at the Brown School necessary for the conversion of this facility to function (*in part*) as the Newburyport Youth Services facility. It is acknowledged herein that any further disposition (*lease or sale*) of the Brown School will be subject to transfer and approvals by both the School Committee and City Council, pending relocation of students and faculty to the new Bresnahan School.

Edward Cameron
Councillor Ed Cameron

Meghan Kinsey
Councillor Meghan Kinsey

In City Council April 15, 2014

Motion to approve by Councillor Cameron, seconded by Councillor Giunta. Motion withdrawn. Motion to refer to Planning & Development by Councillor Cameron, seconded by Councillor Cronin. Roll call vote, 10 yes, 1 absent (Kinsey). So voted.

ORDR108_05_13_19

AD

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

May 13, 2019

AN ORDER RELATIVE TO CITY OF NEWBURYPORT'S ACCEPTANCE OF THE FORMER GEORGE W. BROWN SCHOOL FROM THE NEWBURYPORT SCHOOL COMMITTEE

Pursuant to M.G.L. c. 40, § 15A of the Massachusetts General Laws and a vote of the Newburyport School Committee on March 7th, 2016 (minutes shown in appendix A), the City of Newburyport hereby transfers from the City of Newburyport (School Committee) to the City of Newburyport (City Council) the care, custody, management, and control, for general municipal purposes, of the former George W. Brown School with a street addresses of 40-42 Milk Street and 99-101 Prospect Street Newburyport, Massachusetts, containing the land and all buildings and structures thereupon, as shown on the City of Newburyport's Assessors Map as Parcel ID Nos. 21-26 and 21-3 (shown in Appendix B).

Respectfully Submitted,

Sharif I Zeid, Ward 1 City Councillor

- **ORDR108 05 13 19 Acceptance of the Former George W. Brown School**
Motion to remove from Planning & Development by Councillor Eigerman, seconded by Councillor Zeid. So voted. Motion to approve (comm vote 3-0) by Councillor Eigerman, seconded by Councillor Zeid. Roll call vote, 11 yes. Motion passed.

RESTRICTION AND TRANSFER OF CONTROL

Pursuant to Order ___ approved by the Newburyport City Council on _____, the City Council hereby designates the care, custody, management, and control of that certain portion of "Lot A-1" depicted as "Area of Conservation Restriction (Transfer of Control)" on Exhibit A attached hereto to the Newburyport Conservation Commission, to be held, used, and preserved for open space and conservation purposes subject to the terms set forth below, and provided that such purposes shall include the authority to do all things necessary to preserve the land in its natural state and allow for public passive recreation,

No-Disturbance Zone (Outer 25 Feet):

Disturbance of any kind is prohibited within the twenty-five-foot-wide, no-disturbance zone indicated on Exhibit A (the "No-Disturbance Zone"), including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction, and/or driveway construction. Within such No-Disturbance Zone, no grading, planting, site work, construction, or storage of materials shall be allowed. Vegetation in the No-Disturbance Zone shall not be cut or trimmed in any manner unless authorized by the Grantee as part of regular maintenance required for man-made drainage systems (such as seasonal mowing).

Notwithstanding the above limitations, no activity that will result in the alteration of land within the No-Disturbance Zone shall be permitted with the following exceptions: (a) Planting of native vegetation or habitat management techniques designed to enhance the wetland values protected by this Restriction; (b) Construction and maintenance of unpaved pedestrian access paths not more than four (4) feet in width; (c) Maintenance of existing structures, utilities, stormwater management structures, and paved areas; (d) Construction of new utility lines where the proposed route is the best environmental alternative; and (e) Septic system maintenance and, if a system has failed, repair/replacement meeting state/local standards where the maximum feasible buffer is maintained.

This transfer of the right to administer and control said area is authorized by a vote by the Newburyport City Council, duly moved and seconded, at the City Council meeting held on December 14, 2020, an attested copy of which vote is attached hereto as Exhibit B.

Said area is transferred for the purposes as set forth in Massachusetts General Laws (MGL) Chapter 40, Section 8C and is hereby subject to the protections afforded under Article 97 of the Amendments of the Massachusetts Constitution.

Exhibit A

Plan of "Area of Conservation Restriction (Transfer of Control)"

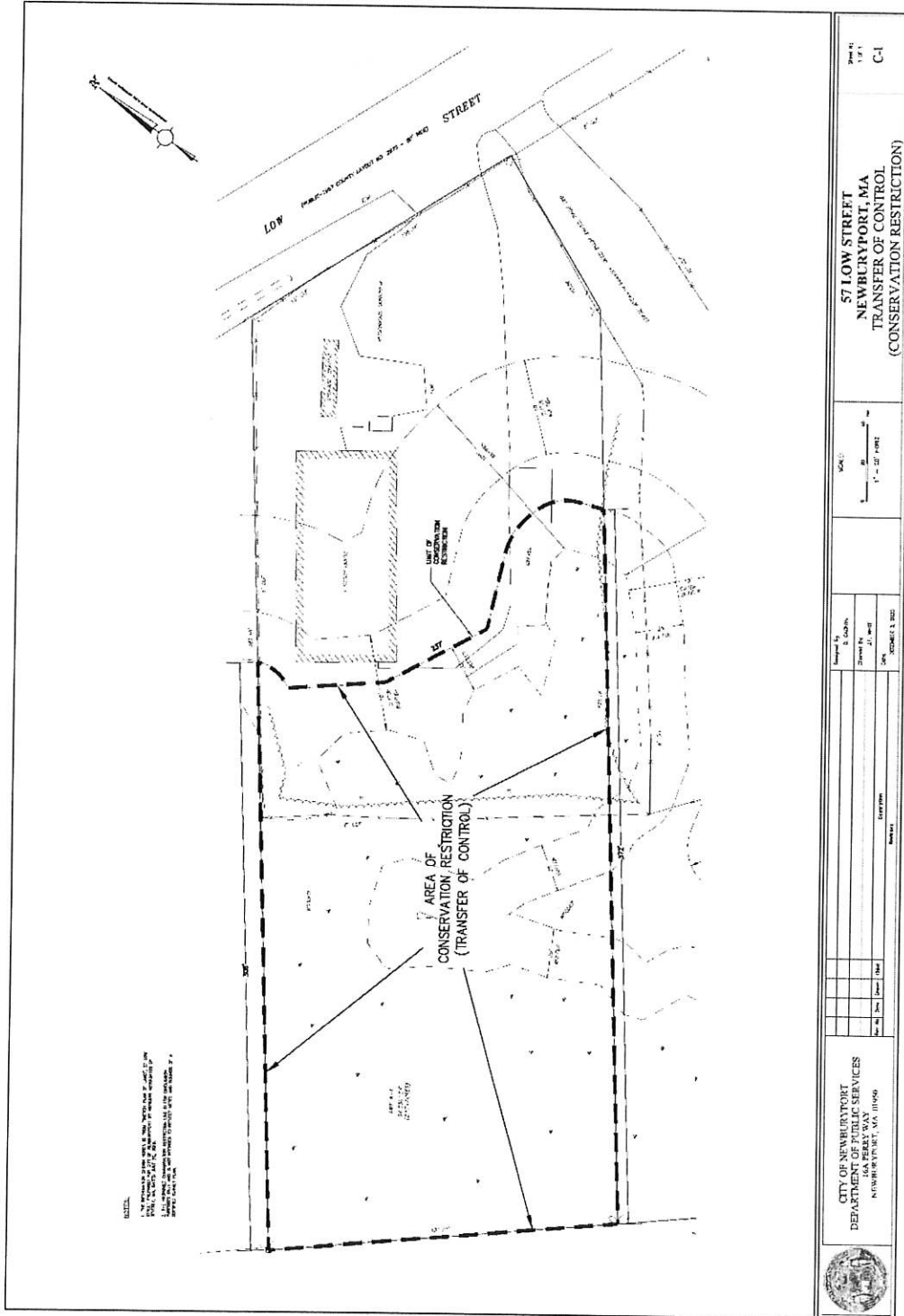


Exhibit B

Attested Copy of Vote on Order ____

(to be inserted behind)