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April 23, 2020

Newburyport Planning Board
Attn: Bonnie Sontag, Chairman
60 Pleasant Street
Newburyport, MA 01950

**RE: Request for Lot Release Shandel Estates Subdivision; Lot 28 Off Rolfe's Lane and Shandel Drive, Newbury, MA
Our File No.: 20-098**

Dear Ms. Sontag:

I represent Scott and Patricia Kinter the owners of the above lot in the Shandel Estates Subdivision (the "Subdivision"). They are the owners of Lot 28 in the Subdivision. (See deed attached as Exhibit A)(the "Property"). My clients acquired the Property from Yvon Cormier Construction, which was the successor developer to Starr Realty Trust which obtained the approval of the subdivision initially and recorded the plan in 1977. (See recorded plan attached as Exhibit B) The lots were encumbered by covenants to guarantee performance. (See covenants attached as Exhibit C)

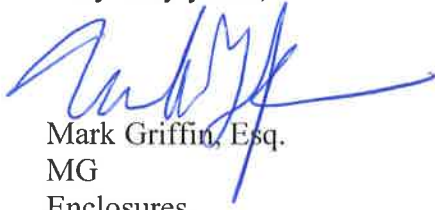
As you know, the Shandel Estates subdivision has long since been constructed and completed, with all of the other lots in the subdivision having been released in or about 1983. (See lot releases attached as Exhibit D). This indicates that the Planning Board has previously ruled the subdivision was in compliance with the covenant conditions.

The Kinters are seeking release of the Property from the covenants. The covenant provision which directly affects the Property is par.7 of the original covenant which is dated August 4, 1977. This purports to require the developer to dedicate the Property to the Town of Newbury for "use as open space and recreation." This was an improper provision imposed by the Planning Board and it has no legal effect. The Planning Board cannot impose restrictions on land outside the City of Newburyport; it can only have jurisdiction over the land which is within the purpose of its Subdivision Rules and Regulations – and that is Newburyport. Accordingly, this restriction was beyond the board's purview as *ultra vires*. See Kosla v. Board of Appeals of Holden, 55 Mass. App. Ct. 62, 65 (2002)(grant of variance by Holden Board of Appeals on Town of Paxton land was outside the intent and purpose of Holden By-laws and was therefore void as *ultra vires*).

Moreover, the Property is not useful as open space and recreation where it is not contiguous to any public land or trails. Notwithstanding this, and in consideration of the language of the void covenant provision, my clients have committed to provide a donation the Newburyport Parks Department provided the Planning Board grants their request for a lot release.

Do not hesitate to call if you have any questions regarding the foregoing request.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Mark Griffin', with a long horizontal flourish extending to the right.

Mark Griffin, Esq.

MG

Enclosures

EXHIBIT A



SO.ESSEX #285 Bk:36133 Pg:007
08/28/2017 12:13 PM DEED Pg 1/2
eRecorded

Quitclaim Deed

Yvon Cormier Construction Corp., a Massachusetts Corporation having a usual place of business at 3 Crenshaw Lane, Andover, Essex County, Massachusetts

for nominal consideration of less than one hundred dollars

grants to Scott R. Kinter and Patricia A. Kinter, a married couple, as tenants by the entirety, of 1 Lancaster Road, Newburyport, Massachusetts

with quitclaim covenants

the land in Newbury, Essex County, Massachusetts, being shown as Lot 28 on a plan entitled, "Definitive Plan Newburyport Arms Subdivision Plan of Land in Newburyport, Mass." dated September 5, 1972 and recorded with Essex South District Registry of Deeds in Plan Book 144, Plan 81.

Said Lot 28 contains 39,507 square feet, according to said Plan.

That portion of Lot 28 included within the bounds of Lot 4A as shown on Plan recorded in Plan Book 281, Plan 90 is conveyed without covenants.

Lot 28 is conveyed subject to Planning Board Covenant at Book 6392, Page 121, Supplemental Covenant at Book 6430, Page 738, and Order of Conditions at Book 6435, Page 463 as affected by Certificates of Compliance at Book 6766, Page 710 and Book 6768, Page 191.

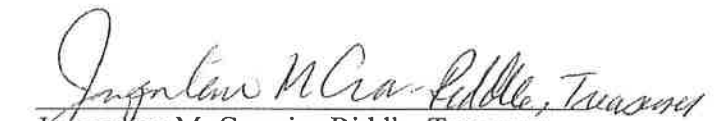
Being a portion of the premises conveyed to Grantor by deed of Arthur E. Fosse and Willard F. Perkins, Trustees of Starr Realty Trust, dated October 16, 1978 and recorded with Essex South Registry of Deeds in Book 6528, Page 772.

This conveyance does not constitute the sale or transfer of all or substantially all of the assets of Yvon Cormier Construction Corp. within the Commonwealth of Massachusetts.

Property Address: Off Rolfes Lane and Shandel Drive, Newbury, MA

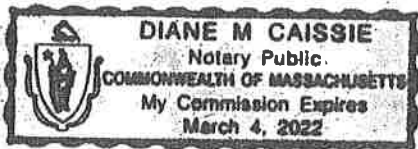
Executed as a sealed instrument this 17th ^{August} day of ~~April~~, 2017



Yvon Cormier, President,
Yvon Cormier Construction Corp.


Jacqueline M. Cormier-Riddle, Treasurer
Yvon Cormier Construction Corp.

COMMONWEALTH OF MASSACHUSETTS

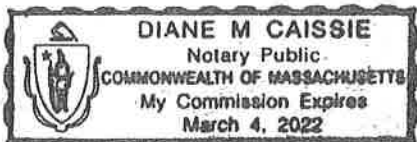
On this 17th day of ~~April~~, ^{August} 2017, before me, the undersigned notary public, personally appeared Yvon Cormier, proved to me through satisfactory evidence of identification, which was his driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.




Notary Public
My Commission Expires: 3/4/22

COMMONWEALTH OF MASSACHUSETTS

On this 17th day of ~~April~~, ^{August} 2017, before me, the undersigned notary public, personally appeared Jacqueline M. Cormier-Riddle, proved to me through satisfactory evidence of identification, which was her 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 for its stated purpose.



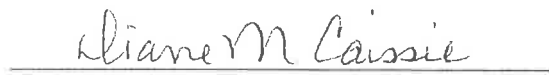
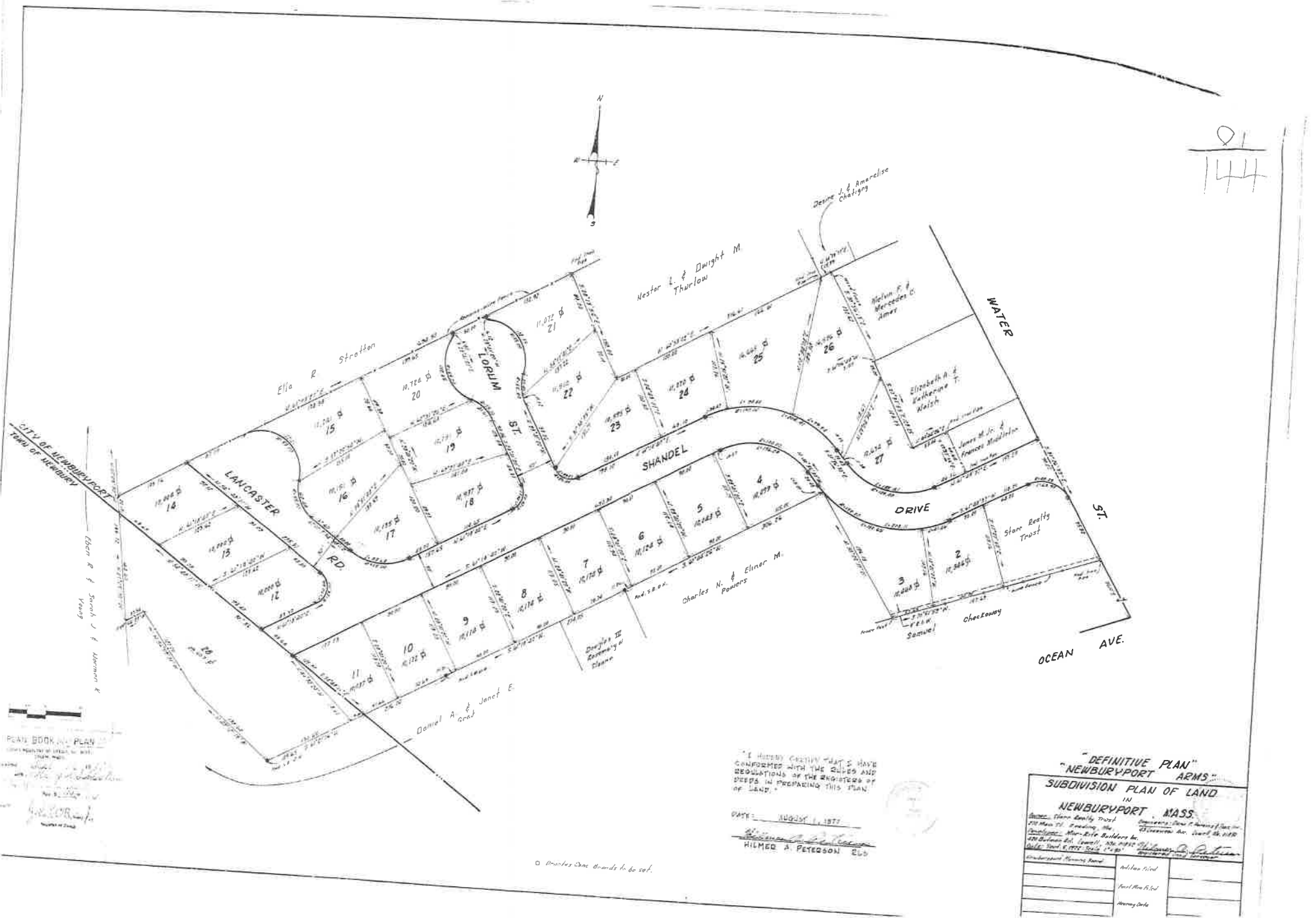

Notary Public
My Commission Expires: 3/4/22

EXHIBIT B

01
144



PLAN BOOK PLAN
COUNTY OF ESSEX, MASS.
TOWN OF NEWBURYPORT
1977

"I HEREBY CERTIFY THAT I HAVE CONFORMED WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS IN PREPARING THIS PLAN OF LAND."

DATE: AUGUST 1, 1977
HILMER A. PETERSON Eld

0. Diminish some demands to be set.

"DEFINITIVE PLAN"
"NEWBURYPORT ARMS"
SUBDIVISION PLAN OF LAND
IN
NEWBURYPORT, MASS.

Owner: Stone Realty Trust
270 Main St., Newburyport, Mass.
Prepared by: Mer-Rite Builders Inc.
490 Belmont St., Lowell, Mass. 01850
Under State's 1957 "Stake" Law

Commissioner: Don P. Murray
25 Commercial Ave., Lowell, Mass. 01850

Subdivider's Planning Board	Noted and Filed
	Filed Map Filed
	Survey Date

EXHIBIT C

COVENANT

I, ARTHUR E. FOSS^{and} Trustees of Starr Realty Trust, 225
 Main Street, Reading, Massachusetts, the owner, and hereinafter
 called "the Sub-Divider" for myself, my heirs, executors, administrators,
 successors or assigns, hereby covenant and agree with the Newburyport
 Planning Board, hereinafter called "the Board" on behalf of the City of
 Newburyport, which covenant shall run with the land, in consideration
 of the approval by the Board on November 22, 1972 of a sub-division of
 land in Newburyport, Massachusetts, which sub-division is entitled
 "Newburyport Arms" and described as "Sub-Division Plan of Land in
 Newburyport, Mass.; owner: Starr Realty Trust, 225 Main Street,
 Reading, Ma.; developer Mor-Rite Builders, Inc., 420 Butman Road;
 Lowell, Ma., 01852, date September 5, 1972: scale 1" = 50'; engineers:
 Dana F. Perkins and Sons, Inc., 43 Lakeview Avenue, Lowell, Ma. 01850;
 Hilmer A. Peterson, registered land surveyor.", consisting of five (5)
 sheets, that no lot shall be sold and no lot shall be released from the
 terms of this covenant until the following conditions have been complied
 with by "the Sub-Divider":

(1) The Sub-Divider shall comply with the "Rules and Regulations
 Governing the Sub-division and Land in Newburyport, Mass., adopted
 by the Newburyport Planning Board on February 19, 1969, except that
 all street rights of way within the sub-division shall be a minimum of
 50 feet.

*See Plan
 Pl. B. 144
 P. 81*

** Pl. Lots
 Restons.
 Lots 4-11 inc.
 + 17-27 inc.
 B. 6808
 P. 800*

*Pl. Lots
 Pl. 102 etc
 B. 7826
 P. 573* 12-16

(2) The Sub-Divider will install a 24" vitrified clay pipe, extending from the last catch basin at the intersection of Shandel Drive, so-called, and Water Street, which pipe will run under Water Street and extend approximately 200 feet into the Merrimack River. There will be a pad under the pipe and the pipe will be encased in reinforced concrete under Water Street to protect it from damage. The pipe will be approximately 3-1/2 feet beneath the surface of Water Street, all as shown on the said Definitive Plan.

(3) The two catch basins at the intersection of Shandel Drive, so-called, and Water Street will be installed at the lowest point where the two streets meet.

(4) The Sub-Divider will install Cape Cod berms within the entire sub-division.

(5) The turn-arounds on Lorain Street, so-called, and Lancaster Street, so-called, will be permanent in layout as shown on said Definitive Plan.

(6) All paved travel ways within the sub-division shall be constructed at a width not less than 30 feet.

(7) The Sub-Divider will dedicate the parcel of land described as Lot 28 consisting of approximately 39,507 square feet on the westerly side of said development of the Town of Newbury or appropriate sub-division thereof, for use as open space and recreation.

(8) No building will be constructed with the sub-division until such time that all roads have been constructed and approved and municipal services installed and approved, or that a bond in an appropriate amount to cover such construction and installation, the amount to be determined by the Newburyport Planning Board, has been posted.

(9) The Sub-Divider will grade and develop all property within the sub-division such that there will be no accumulation of surface water and that all surface water, within the sub-division will flow into the drainage system.

This instrument is to take effect as a sealed instrument.

WITNESS my hand this 4th day of August 1977.

William F. Perkins
Trustee

Arthur E. Fosse
Sub-Divider
Trustee

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

August 4, 1977.

Then personally appeared the above named Arthur E. Fosse, Trustee of Starr Realty Trust, and acknowledged the foregoing instrument to be his free act and deed, before me

Notary Public Seal

My commission expires: June 5, 1981

ESSEX SS. RECORDED Sept 12, 1977 46 A.M. PAST 10 A.M. INST. # 117

SUPPLEMENTAL COVENANT

Re. Lots
Restrns.
Lots 4-11 inc.
+ 17-27 inc.
B. 6808
P. 800

Re. Lots
Plot 2 etc
B. 7226
P. 513

I, Arthur E. Fosse, Trustee of Starr Realty Trust; 125 Main Street, Reading, Massachusetts, the owner, and hereinafter called "the Subdivider" for myself, my heirs, executors, administrators, successors and assigns, hereby covenant and agree with the Newburyport Planning Board, hereinafter called "the Board", on behalf of the City of Newburyport, in consideration of the approval by the Board on November 22, 1972, of a subdivision of land in Newburyport, Massachusetts, shown on a plan by Dana F. Perkins & Sons, Inc., registered as an engineer or land surveyor in Massachusetts, dated September 5, 1972 and recorded in the Essex South District Registry of Deeds, Plan 144-81, and of the Board's approval of a plan and profile dated September 5, 1972, of Lorum Street, Lancaster Street and Shandel Drive, included in said subdivision and as modified below; that:

- (a) no multi-family dwellings will be constructed on any lots within the subdivision;
- (b) underground electric and telephone facilities will be installed;
- (c) no sidewalks will be installed on Lorum Street and Lancaster Street;
- (d) all paved travel ways within the subdivision shall be constructed at a width not less than 25 feet.

This instrument shall take effect as a sealed instrument.

WITNESS my hand this 8th day of December 1977.

STARR REALTY TRUST

Arthur E. Fosse
Arthur E. Fosse, Trustee

COMMONWEALTH OF MASSACHUSETTS
MIDDLESEX, SS.

Then personally appeared Arthur E. Fosse and acknowledged the foregoing instrument to be his free act and deed, before me,

Mary E. Moynihan
Mary E. Moynihan
Notary Public
My commission expires June 5, 1981

APPROVED:

NEWBURYPORT PLANNING BOARD

BY: [Signature]

Angela Marcello

Frank P. Guilford

Richard W. Maloney

John D. Rubin

James [Signature]

EXHIBIT D

FORM E

CERTIFICATE OF PERFORMANCE
(Covenant Approval Release)

Newburyport, MA 10/23, 1980

The undersigned, being a majority of the Planning Board of the City of Newburyport, Massachusetts, hereby certify that the requirements for work on the ground called for by the Covenant dated 12/8, 1977, and recorded in Essex South District Deeds, Book 5708, Page 327, have been completed to the satisfaction of the Planning Board as to the following enumerated lots shown on Plan entitled Definitive Plans, Newburyport Arms Subdivision recorded with said Deeds, Plan Book 144, Plan 81, and said lots are hereby released from the restrictions as to sale and building specified thereon.

Lots designated on said Plan as follows: ...

4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

E. James Gaines

Richard C. Aiken

Peter B. DeMaranville

Frederick T. Jones, Jr.

Fred P. Gabriel

Majority of the Planning

Robert P. Yano

John D. Aiken

Board of the City of
Newburyport.

Joyce P. Fossa

John P. Murphy

COMMONWEALTH OF MASSACHUSETTS

Essex, SS

October 23,

1980

Then personally appeared E. James Gaines, one of the above named members of the Planning Board of the City of Newburyport, Massachusetts and acknowledged the foregoing instrument to be the free act and deed of said Planning Board, before me

*See Book 6392 Page 121, Book 6392
Page 124 and Book 6430 Page 738.

Shila R. Kennedy

Notary Public

My commission expires: 3-1-85



ESSEX SS. RECORDED April 15 1981 55 M. PAST 10 A.M. INST #88

32

May 27, 1983

Mr. Yvon Cormier
Yvon Cormier Construction Corporation
59 Chandler Circle
Andover, Massachusetts 01810

Re: Shandel Estates Subdivision, Release of Lots

Dear Mr. Cormier:

Please be advised that on Thursday, April 28, 1983, the Newburyport Planning Board, by majority vote, released the following lots on the plan of land entitled "Shandel Estates" subdivision:

Lots #12, #13, #14, #15, #16 Plan Book 144, Plan 81.
See Planning Board Covenants Book 6392, Page 121 and Book 6430, Page 738.

Yours truly,

Mark Rogers

E. James Gaines
Newburyport Planning Board

James Gaines
8/23/83