



Massachusetts State Lottery Commission

DEBORAH B. GOLDBERG
Treasurer and Receiver General

MARK WILLIAM BRACKEN
Interim Executive Director

July 22, 2022

Hopedale Board of Selectmen
78 Hopedale Street - P.O. Box 7
Hopedale, MA 01747

Dear Sir/Madam:

In accordance with Massachusetts General Laws, chapter 10, section 27A, (as amended on 5/20/96), you are hereby notified that an application for a KENO license has been received by the Massachusetts State Lottery Commission, (MSLC) from:

Hopedale Pizza Market
1 Menfi Way
Hopedale, MA

If the city/town objects to the issuance of the KENO license, it must claim its right to a Hearing before the MSLC within twenty-one (21) days of receipt of this notice.

In accordance with section 27A(b), the objection of the city/town must be “as a result of an official action” taken by said city or town regarding the KENO applicant. In order to be fair and apply the same criteria to all cities, towns, and applicants, the MSLC defines an “official action” to be one in which the applicant appeared, or was given the opportunity to appear, before the licensing authority to discuss the issue at the local level in an open hearing or meeting prior to the Hearing at the MSLC.

If you object to these agent(s) receiving a monitor, you must do so, in writing, within twenty-one (21) days of receipt of this letter. If applicable, please address your written objection to the Massachusetts State Lottery Commission, Legal Department, 150 Mount Vernon Street, Dorchester, MA 02125 and send via email to cporche@masslottery.com or by mail. Should you have any questions regarding this program or any other issues relative to the Lottery, please call the Lottery’s General Counsel, Greg Polin, at 781-917-6057 or via email at gpolin@masslottery.com. We look forward to working with you as the Lottery continues its efforts to support the 351 cities and towns of the Commonwealth.

Very truly yours,

MSLC Licensing Department

Hopedale Pizza Market
On-line - Glenda Hazard -
On-line Brian Keyes



Supporting the 351 Cities and Towns of Massachusetts

HOPEDALE POLICE DEPARTMENT

Fiscal 2022 Monthly Stats

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
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Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total For Year
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TRAFFIC ACTIVITY

Total # Of Motor Vehicle Accidents Responded Too	5	4	2	7	4	1	0	0	3	11	12	4	53
Total # Of Parking Tickets Issued	3	2	13	0	11	12	3	4	3	2	1	3	57
Total # Of Vehicles Towed	5	2	3	10	7	7	8	12	13	10	7	11	95
Total # Of Motor Vehicle Lockouts	1	3	2	0	2	5	1	1	1	1	0	3	20
Total # Of Disabled Auto/Public Assist	6	9	4	6	6	9	13	9	9	5	4	5	85
Total # Of Motor Vehicle Thefts	0	0	0	0	0	0	0	0	0	0	0	0	0
Total # Of Motor Vehicle Stops	89	63	58	74	114	75	41	67	85	93	128	175	1062
Total # Of Motor Vehicle Citations Issued	90	60	53	82	121	79	42	73	91	94	119	210	1114
Total # Of Written/Verbal Warnings Issued	79	41	37	71	111	57	25	60	56	64	105	153	859
Total # Of Hours Spent On Selective Enforcement	16	18	43	23	25	16	4	20	26	24	11	0	226
Total # Of Hours Spent For School Resource Officer	0	5	9	26	20	25	17	9	10	10	14	2	147
Total # Of Hours Spent On Preventative Patrolling	1023	1061	988	1116	1052	1061	1116	1096	1095	1123	1000	35	11766
Total # Of Hours Spent At Court	2	1	3	6	5	12	14	4	2	4	16	1	70
Total # Of Hours Spent On Community Policing	1	1	4	2	4	0	3	1	6	0	2	0	24
Total # Of Hours Assisting Other Agencies	19	14	22	17	9	8	14	13	18	15	16	0	165

CRIMINAL ACTIVITY

Total # Of Alarm Calls	7	10	13	21	10	13	18	20	11	5	7	11	146
Total # Of Harassing Phone Calls	2	0	2	1	0	1	0	1	1	1	0	0	9
Total # Of Breaking & Entering	0	0	0	1	0	0	2	0	0	0	0	0	3
Total # Of Summons Served / Delivered	0	0	0	2	4	6	2	0	0	1	0	4	19
Total # Of Criminal Damage	1	0	0	1	0	1	1	1	0	3	0	1	9
Total # Of Missing Persons / Runaway / Juvenile	0	1	0	4	0	0	0	0	0	0	0	0	5
Total # Of Property Checks Made	281	283	278	225	290	348	351	283	277	244	250	201	3311
Total # Of 911 Calls	18	18	29	27	34	28	32	24	21	20	29	24	304
Total # Of Disturbance / Fight Calls	19	9	7	12	10	9	8	4	10	6	7	8	109
Total # Of Animal Complaint Calls	12	12	16	9	3	11	13	7	9	7	5	15	119
Total # Of Arrests	9	10	7	7	5	9	11	6	18	14	10	21	127
Total # Of Officer Investigative Cases	139	120	109	139	162	137	102	120	158	161	211	243	1801
Total # Of Field Interviews	8	8	12	10	3	6	11	11	15	7	14	15	120
Total # Of Calls For Service	993	1013	1029	1053	1110	1092	1044	918	1015	933	1036	1100	12336

HOPEDALE POLICE DEPARTMENT

Fiscal 2022 Quarterly Stats

4th Quarter

TRAFFIC ACTIVITY

Apr	May	Jun	Total
			4th Quarter

Total # Of Motor Vehicle Accidents Responded Too	11	12	4	27
Total # Of Parking Tickets Issued	2	1	3	6
Total # Of Vehicles Towed	10	7	11	28
Total # Of Motor Vehicle Lockouts	1	0	3	4
Total # Of Disabled Auto/Public Assist	5	4	5	14
Total # Of Motor Vehicle Thefts	0	0	0	0
Total # Of Motor Vehicle Stops	93	128	175	396
Total # Of Motor Vehicle Citations Issued	94	119	210	423
Total # Of Written/Verbal Warnings Issued	64	105	153	322
Total # Of Hours Spent On Selective Enforcement	24	11	0	35
Total # Of Hours Spent For School Resource Officer	10	14	2	26
Total # Of Hours Spent On Preventative Patrolling	1123	1000	35	2158
Total # Of Hours Spent At Court	4	16	1	21
Total # Of Hours Spent On Community Policing	0	2	0	2
Total # Of Hours Assisting Other Agencies	15	16	0	31

CRIMINAL ACTIVITY

Total # Of Alarm Calls	5	7	11	23
Total # Of Harassing Phone Calls	1	0	0	1
Total # Of Breaking & Entering	0	0	0	0
Total # Of Summons Served / Delivered	1	0	4	5
Total # Of Criminal Damage	3	0	1	4
Total # Of Missing Persons / Runaway / Juvenile	0	0	0	0
Total # Of Property Checks Made	244	250	201	695
Total # Of 911 Calls	20	29	24	73
Total # Of Disturbance / Fight Calls	6	7	8	21
Total # Of Animal Complaint Calls	7	5	15	27
Total # Of Arrests	14	10	21	45
Total # Of Officer Investigative Cases	161	211	243	615
Total # Of Field Interviews	7	14	15	36
Total # Of Calls For Service	933	1036	1100	3069



DAVIS MALM
ATTORNEYS
CELEBRATING 40 YEARS

Courtney A. Simmons

P: 617.589.3832 | F: 617.523.6215
csimmons@davismalm.com

July 26, 2022

VIA FIRST CLASS MAIL AND EMAIL

Land Court Department, Clerk's Office
Attn: Sharmilla Budhram
Three Pemberton Square, 5th Floor
Boston, MA 02108
sharmilla.budhram@jud.state.ma.us

Re: *High Hopes, LLC v. Hopedale Zoning Board of Appeals, et al.*
Land Court C.A. No. 21 MISC 000409 (MDV)

Dear Clerk Budhram:

Enclosed for filing and docketing in the above-referenced matter please find a Stipulation of Dismissal.

Thank you for your time and attention to this matter.

Sincerely,

Courtney A. Simmons

Encl.

cc: Robin Stein, Esq. (via email)
Shawn McCormack, Esq. (via email)



THE COMMONWEALTH OF MASSACHUSETTS
STATE RECLAMATION & MOSQUITO CONTROL BOARD
**CENTRAL MASSACHUSETTS
MOSQUITO CONTROL PROJECT**
111 Otis Street, Northborough, MA 01532 - 2414
Telephone (508) 393-3055 • Fax (508) 393-8492
www.cmmcp.org



COMMISSION CHAIRMAN
RICHARD DAY

EXECUTIVE DIRECTOR
TIMOTHY D. DESCHAMPS

July 19, 2022

Town of Hopedale
Board of Health
Hopedale, MA 01747

Central Massachusetts Mosquito Control Project personnel will be in your community to respond to residents' concerns about mosquitoes in their area on the following dates in August/September:

August 1, 8, 15, 22, 29

Any of the above dates are tentative, and all dates are subject to change due to weather conditions, mosquito populations, mosquito virus activity and/or special event spraying. This program will shut down when cool night time temperatures become predominant in the area. A detailed notice about our spray schedule is posted on the CMMCP phone system after 3:30 p.m. each day, and it is also listed on our website at <http://www.cmmcp.org>, click the "2022 Spray Schedule" button on the right.

Requests for service may be recorded by calling the CMMCP office at (508) 393-3055 between 7:00 AM - 3:30 PM, Monday through Friday, or logging on to <http://www.cmmcp.org>. Results of these requests may initiate an application of mosquito insecticides to defined, site-specific areas of town. Such an application may be accomplished by using truck mounted equipment depending on the extent of the application.

Per 333CMR13.03(1)(a): "Wide Area Applications of pesticides and mosquito control applications of pesticides approved by the State Reclamation and Mosquito Control Board shall not be made to private property which has been designated for exclusion from such application by a person living on or legally in control of said property." For more information please check: <http://www.cmmcp.org> and click the "No Spray Info" button on the right.

Please list this information in the local newspapers and on the local cable access channels if possible. Thank you for your assistance.

Sincerely,

Timothy D. Deschamps

Executive Director

cc: City/Town Clerk
Police Department

July 27, 2022

Katharine Lord Klein
kklein@k-plaw.com

BY ELECTRONIC MAIL ONLY (PlanningBoard@hopedale-ma.gov)

Planning Board
Hopedale Town Hall
P.O. Box 7
Hopedale, MA 01747

Re: Overdale Parkway – Hopedale Ridge

Dear Members of the Planning Board:

You have requested an opinion responding to the claims of the Overdale Parkway Association, a group of abutting landowners to Overdale Parkway (the “Abutters”), as set forth in a letter of Mark S. Bourbeau, Esq., dated February 7, 2022, addressed to the Hopedale Select Board. This request arises in the context of a 10-lot subdivision application submitted by Black Brook Realty Corporation (“Black Brook”), which is proposing to create 6 lots on the west side of Overdale Parkway, and Ricardo Lima (“Lima”), who is proposing to create 4 lots on the east side of Overdale Parkway (Black Brook, together with Lima, the “Applicants”), as described on a plan entitled “Hopedale Ridge A Definitive Subdivision Plan on Overdale Parkway in Hopedale, MA 01747,” prepared by Allen Engineering & Associates, Inc (the “Plan”).

Background

The Applicants own land with frontage on the final section of Overdale Parkway, which commences at Hopedale Street and ends at the entrance to the Hopedale Parklands. The underlying fee of the road is owned by the Town, which acquired all of Overdale Parkway in a series of conveyances between 1916 and 1945. The Abutters’ properties also front on Overdale Parkway.

In or about 1999, Black Brook sought approval of a 42-lot subdivision on the west side of this portion of Overdale Parkway. The Hopedale Planning Board approved the subdivision, which decision was appealed to the Land Court. In 2003, the Land Court held that the Planning Board exceeded its authority in permitting Black Brook to create a 42-lot subdivision on its property as Black Brook did not have authority to use Overdale Parkway, specifically that portion shown on the Plan. This decision was affirmed by the Court of Appeals in Parker v. Black Brook Realty Corporation, 61 Mass.App.Ct. 308 (2004). Further appellate review was denied.

Subsequently, the Applicants became aware of a June 24, 1985 Special Town Meeting of the Town of Hopedale (the “1985 Vote”), where it was voted to accept as a gift a 30 foot wide paved access road into the Hopedale Parklands from the present end of the pavement on Overdale Parkway,

for a distance of approximately 703 feet, all as shown on a plan of land dated June 1, 1985, “showing paved road donated to the Town of Hopedale under Article 7 of June 24, 1985 Special Town Meeting by Virginia A. and Edward D. Larkin and the limits of the right of way granted to the owners of Lots 1, 2, 3, 4 on the Easterly side and the owners of Lots 1, 2, 3, 4, 5, 6 on the Westerly side and the area rededicated to park use,” said plan prepared by Guerriere & Halnon, Inc. The existence of the 1985 Vote was not known to the parties or courts in the earlier litigation.

In accepting the gift, the Town:

grants, upon the effective date of the acceptance, as set forth hereinafter, to the owners of the ten (10) lots shown on said plan, their heirs and assigns, the perpetual right and easement to pass and repass from each lot shown on said plan to said access road and over said access road to Overdale Parkway and to use said paved road for all purposes that public ways are used in the Town of Hopedale. (emphasis supplied)

These are the same ten (10) lots and roadway that are the subject of the pending application before the Planning Board.

Black Brook, Lima and the Town, acting by and through its Select Board, entered into an Agreement, dated August 9, 2021, recorded with the Worcester South District Registry of Deeds in Book 65903, Page 351 (the “Agreement”). The Town accepted the gift of the road, and the Applicants agreed to: (1) upgrade the road to current Town subdivision standards; and (2) design and construct 4-5 parking spaces, through an easement or in fee, within the cul-de-sac shown on the plan for the benefit of members of the public to access the Hopedale Parklands. Black Brook further agreed to deed a fee interest in or grant a conservation restriction upon the balance of the land it owned to the Town of Hopedale.

Effect of the Earlier Litigation

In my opinion, the Applicants have a right to seek approval of the Planning Board for the proposed subdivision, as the 1985 Vote and the Agreement provide the required access that the Land Court and Appeals Court held was lacking. The creation of six lots on the Black Brook property varies significantly from the prior proposal for a 42-lot subdivision. Approval to subdivide the east side of the road has never been sought. Moreover, as addressed below, the 1985 Vote substantially changes the posture of the application pending before the Planning Board. The action of Town Meeting – unknown to the parties to the earlier litigation – significantly changes the analysis of this matter. Accordingly, in my opinion, the prior judicial decisions addressing this property have no precedential effect on the subdivision now before the Planning Board.

Diversion of Public Resources

Town Meeting, by the 1985 Vote, agreed to permit the owners of what are now the Black Brook and Lima properties to use Overdale Parkway to access ten lots, subject to certain conditions. The Applicants have, in addition to complying with those conditions, and in consideration of the right to use the Town property, offered to upgrade the portion of Overdale Parkway on which their lots would be created, and which serves the Hopedale Parklands; provide a parking area for the Parklands and dedicate a substantial portion of the Black Brook property as open space/conservation land to the Town.

Towns routinely grant rights to private parties in Town-owned property, both with and without consideration from the private party. In this case, the Applicants have offered to confer a substantial benefit on the Town, as discussed above.

Nor, in my opinion, does the proposed use contravene G.L. c. 82, §§21-23. Overdale Parkway is not, nor is anyone asserting, that the road has become is a public way.

Rights of Town as Owner of the Road; Taking of Rights of Abutters

Attorney Bourbeau asserts that the use of Overdale Parkway by the future owners of the lots sought to be created by the Applicants would constitute a taking of the property of the Abutters by the Town.

The Abutters have a *non-exclusive* easement to use the Town-owned Overdale Parkway¹. This right is not absolute. So long, in my opinion, as there is not unreasonable interference with the easement rights held by the Abutters, the Town may, in my opinion, grant rights to others to use the road, and the conveyance of such rights does not result in a taking of the Abutters' property.

The owner of the underlying property in the context of easements may grant rights to others in the same property, so long as the rights of the easement holder are not unreasonably interfered with. The Supreme Judicial Court considered the respective interests of the owner of the underlying fee and the easement holder in Martin v. Simmons Properties, LLC, 467 Mass. 1 (2014), which involved the reduction in the dimensions of an access easement by the owner of the servient estate. The Court, citing the Restatement (Third) of Property (Servitudes) at §4.9, wrote “[i]n resolving conflicts among the parties to servitudes, the public policy favoring socially productive use of land generally leads to striking a balance that maximizes the aggregate utility of the servitude and the servient estate.” Martin v. Simmons Properties, LLC at 13-14. The owner of the “servient estate,” in this case the Town, is entitled to make all use of the land that is not prohibited by the servitude and does not interfere unreasonably with the uses authorized by the easement. The rights of the party benefitting from the easement depend on “the intention of the parties regarding the creation of

¹ It is not clear that all of the existing residences on Overdale Parkway have express rights to use the road in their deeds.

the easement or right of way, determined from the language of the instruments when read in the light of the circumstances attending their execution, the physical condition of the premises, and the knowledge which the parties had or which they are chargeable to determine the existence and attributes of a right of way.” *Id.* at 14, quoting Adams v. Planning Board of Westwood, 64 Mass.App.Ct. 383, 389 (2005).

The use of Overdale Parkway by other property(ies) is certainly foreseeable. Commencing in 1916, the Town acquired the entirety of the fee in the road from Hopedale Street to the Hopedale Parklands – extending beyond the land owned by the Abutters. Moreover, the easement rights granted to the Abutters in Overdale Parkway were not exclusive. The Town, in my opinion, was not required to expressly reserve the right to grant additional rights – this right is implicitly held by the owner of the dominant estate, i.e., the Town. The Abutters, further, do not have a justifiable expectation that the use of Overdale Parkway will be “limited in number to those granted or reserved the easements of access” at the time they were granted, as asserted by Attorney Bourbeau. Such a conclusion is contrary to the law, as discussed above, regarding the limitation of easements. Finally, Attorney Bourbeau has not elaborated on the specific rights of the Abutters that would be adversely affected by approving this subdivision.

In my further opinion, the use of Overdale Parkway by owners of residential lots in the proposed subdivision would not constitute a taking. Where the Town has, in my opinion, the right to grant others rights in the servient estate, the exercise of that right does not, in my opinion, result in the acquisition of a property right for which compensation is due.

Validity of Town Meeting Vote

The 1985 Vote, in my opinion, is not stale, and authorizes the Select Board to enter into the Agreement with the Applicants.

The case cited by Attorney Bourbeau, Littlefield v. Boston & A.R. Co., 146 Mass. 268 (1888) appears to be an outlier. In a case decided prior to Littlefield, as well as a case decided thereafter, the Supreme Judicial Court held that a vote of Town Meeting conferred authority on subsequent boards to act to sell property. In Packard v. First Congregational Parish in Duxbury, 256 Mass. 550, 551-552 (1926), the Court held that the Town Meeting vote to sell property showed “the assent of the town to a sale when made if it is deemed advisable by the selectmen, and the action of the town also show[ed] that there was no intention to limit the discretionary power to the board of selectmen then in office.” The Court cited both the Littlefield case², and Lumbard v. Trask, 9 Metcalf 557 (1845) for this proposition. In Lumbard v. Trask, 9 Metcalf 561, the Court recognized the power of Town Meeting to authorize both current and future boards to act. The Court found no limitation in the vote to the present year, or to the then existing board of selectmen.

² The Littlefield case, arguably, is distinguishable, in that the authority given by Town Meeting was limited to a referral “to the selectmen.” *Id.* at 274.

Absent a limitation within the 1985 Vote as to its scope, in my opinion the Select Board acted properly in giving effect to the Town Meeting action.

Effect of the 1985 Vote

The intent of the 1985 Vote to grant these ten lots the right to use Overdale Parkway from Freedom Street as access is clear. The 1985 Votes states: “if any lot owner shown on the plan to whom said rights and easements have been granted allows any such other lot owner to pass through a lot shown on this plan without authorization of a Hopedale Town Meeting then the rights and easements granted to said lot owner shall be terminated forthwith and shall not be reinstated without Town Meeting approval.” (emphasis supplied) In my opinion, Town Meeting voted to accept a gift of the road, and, further, to grant an easement for access to the owners of these ten lots on the Town-owned roadway.

The Agreement, in my opinion, merely memorializes the terms of the 1985 Vote. It effectuates the 1985 Vote – it does not create rights which did not already exist. The Applicants, in my opinion, have the right to use Overdale Parkway to access the ten lots under consideration by the Planning Board.

Applicability of Article 97

Overdale Parkway, and, specifically, the portion of the road abutting the Applicants’ properties, is not, in my opinion, dedicated to Article 97 of the Amendments to the Massachusetts Constitution. In Smith v. Westfield 478 Mass. 49 (2017), the Supreme Judicial Court considered whether Article 97 applied to a parcel of land originally acquired by the city through a tax taking. The Court held that the property was subject to Article 97 because the city, through its actions, clearly expressed its intent to protect the property permanently. I find no evidence of such express intent relative to Overdale Parkway.

The Applicants retained Gould Title Company, Inc. to research the title to Overdale Parkway. See Title Report, dated May 18, 2021. The title examiner found “no evidence in the [deeds to the Town], that the tracts were to be used for park purposes.” Joseph M. Antonellis, Esq. wrote a letter to the Hopedale Planning Board, dated April 23, 1999, at the behest of John Burns, who is a principal of Black Brook, in which he concluded that there was “no evidence of any...dedication of that strip of Overdale Parkway to the Parklands.” Moreover, Mr. Antonellis reported that he had “personally undertaken research of each and every town meeting warrant from 1918...forward and determined that the land Clark deeded to the town [for Overdale Parkway] was never dedicated to Parklands.”

Attorney Bourbeau extrapolates from the fact that the Town acquired a large parcel of land for expansion of the Parklands at the same time as the Town acquired portions of Overdale Parkway,

Planning Board
July 27, 2022
Page 6

that Overdale Parkway was dedicated to Article 97. In my opinion, this conclusion is not warranted by the totality of the circumstances surrounding these acquisitions. Neither Attorney Antonellis and the Gould Title Report find Attorney Bourbeau's statement to be supported by the evidence. While the parcel that became part of the Parklands was acquired contemporaneously with portions of Overdale Parkway, "it is clearly separate than that land taken by the Park Commission." See Gould Title Report. Compare the taking by the Town of Hopedale Park Commissioners recorded with the Worcester South District Registry of Deeds in Book 1630, Page 11, where the land was *expressly dedicated* to park purposes, with the deeds to the Town of Hopedale for Overdale Parkway, where no such dedication is found.

Conclusion

In summary, in my opinion, by virtue of the 1985 Vote, as memorialized by the Agreement, the Applicants have the right to access their property by Overdale Parkway.

Please do not hesitate to contact me with any questions.

Very truly yours,



Katharine Lord Klein

KLK/caa

cc: Select Board (DSchindler@hopedale-ma.gov)

823422/HOPD/0133