

**Special Meeting
Board of Selectmen
January 8, 2021
9:45 am**

Chair Keyes called the meeting to order 9:47AM

Pledge of Allegiance

Call Meeting to Order in Open Session

This meeting is exclusively for the purpose of mediation and will be held virtually through REBA Dispute Resolution, Inc. The Board **will not** be returning to open session.

Chair Keyes stated that the next open session Board of Selectmen meeting will take place on Tuesday, January 12, 2021 with a tentative update regarding mediation sessions and other topics. Selectman Arcudi suggested to try to limit the agenda for other business on Tuesday, January 12, 2021. Selectman Arcudi stated that the Tuesday agenda will be a full agenda as is and other business that is not time sensitive or critical can go on the following agenda.

Attorney Peter F. Durning stated to the residents regarding this executive session, that he and the Board of Selectmen are interested in having this dialogue and seeing what can be achieved. The Board of Selectmen are not going to vote to adopt a settlement agreement during this executive session. Any such decision will be made in open session.

Move into Executive Session

Motion: G.L. c. 30A, § 21 with respect to participation in mediations, c. 30A, § 21(a): 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that: (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

REBA Dispute Resolution Mediation: Town of Hopedale v. Priscoli, et al; Land Court Docket No. 20 MISC 000467 (DRR) LOMBARDI

Selectman Arcudi made a motion to adjourn the open session and move to executive session. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Close Executive Session

Dissolve Meeting

Chair Keyes dissolved the regular meeting at 10:03AM

Submitted by:

Lindsay Mercier, Executive Assistant

Adopted: _____

Board of Selectmen
January 12, 2021
7:00 pm

Call to order via Zoom Meeting

Chair Keyes called the meeting to order at 7:00PM

Pledge of Allegiance

Consent Items

Approval of January 4, 2021 Regular Minutes

Chair Keyes stated that he has read the minutes. Selectman Arcudi stated that he would like the Executive Assistant to edit a portion of the minutes prior to making a motion to approve the January 4, 2021 minutes. Regarding the COVID Update, he would like to modify the minutes to reflect that the restaurant has not been shut down or participating in take out only and has been open to customers. Selectman Hazard stated that before approving the January 4, 2021 meeting minutes, she would like to modify the portion of "Appointments and Resignations" to reflect that the Tree Warden position will be open to applicants within the week, not weeks.

Selectman Arcudi moved to approve the January 4, 2021 Regular Minutes, per the changes stated. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Rent Abatement for Month of December – Beyond Full

Town Administrator stated that on December 15, 2020 the Hopedale Health Agent had spoken to members of Beyond Full and asked them to maintain take out service due to COVID restrictions and ventilation issues. The Town Administrator stated that she was not aware that Beyond Full had reopened to dine-in service. Selectman Arcudi stated that he had driven past the restaurant twice and there is a sign on the door notifying the public of indoor available seating. Town Administrator stated that she is working with the Building Commissioner to get the number of reduced occupancy that the restaurant would be permitted to have as indoor seating (COVID Restrictions – 25% occupancy, does not include staff). The Town Administrator stated that she has attempted to contact the Owner of Beyond Full, Richard Yancey, but has not been able too. Chair Keyes asked the Board what their thoughts are regarding allowing the restaurant to stay open for take-out only or should the restaurant remain closed? Town Administrator stated that her concerns are the ventilation in Town Hall. She made the Board and the public aware that Town Hall does have a blower system that pushes the air outside, but it is located directly under the upstairs offices windows. This is not a true ventilation system.

Selectman Arcudi asked if the restaurant is asking for rent abatement for December 2020 or January 2021, since it is already January 12, 2021. Town Administrator Schindler stated that the restaurant is asking for rent abatement for December 2020. Selectman Arcudi stated he would prefer to give rent abatement for the month of January 2021 and allow the restaurant to do take-out only. Selectman Hazard asked to what extent was the restaurant able to operate during the month of December 2020, was it take-out only or partial. Selectman Arcudi stated that he is not aware what their operation capacity was for the month of December 2020, however, once the Town Administrator speaks with the Owner the Board of Selectmen can revisit this question/item. Selectman Arcudi stated that his immediate issue is to create a safe environment for the Town Employees.

Selectman Arcudi made a motion to grant Beyond Full rent abatement for the month of January 2021, with the stipulation that they will only be able to do take-out only until the ventilation system issue is resolved. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Hopedale Fire Department – Request to Waive (One Time Fee of \$5.00) Burning Permit Fee for 2021 Open Air Burning Season; Letter Attached

Chair Keyes read the letter provided by the Fire Chief regarding waiving the Burning Permit Fee for 2021. It is noted in the letter the revenue generated by the burning permit fees are \$600 annually. Chair Keyes stated that it is not a revenue issue it is a safety issue due to COVID. Chief Daige stated that to obtain the burning permit, residents need to come to the fire house, fill out the forms and pay in cash. The current COVID protocol discourages these interactions with the public. The Fire Chief stated that open air burning begins on January 15, 2021 to May 1, 2021. Residents will still be allowed to partake in open air burning but should call the fire department prior to. Chief Daige stated that hopefully by next year there will be an online permitting portal for residents to use.

Selectman Hazard made a motion to waive the burning fees for the 2021 season. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Appointments and Resignations

Appointment of Kevin Kokansky as a Full-Time Police Officer effective January 18, 2021 (Letter Attached).

Chair Keyes read the letter provided by Chief Giovanella. Chair Keyes congratulated Kevin Kokansky on being selected for this position.

Selectman Arcudi made a motion to appoint Kevin Kokansky as a Full-Time Police Officer effective January 18, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointment of Zachary Perro as a Full-Time Officer to the Hopedale Police Department, effective February 15, 2021. (Letter Attached)

Chair Keyes read the letter provided by Chief Giovanella. Chair Keyes stated that Zachary is an excellent candidate and an asset to the Hopedale Police Department. Chief Giovanella stated that the Hopedale Police Department is very lucky to have him as an officer.

Selectman Hazard made a motion to appoint Zachary Perro as a Full-Time Police Officer effective February 15, 2021. Selectman Arcudi seconded the motion.

Hazard – Aye, Arcudi – Aye, Keyes – Aye

Resignation of Karla Hopkins from the Hopedale Finance Committee, effective January 7, 2021

Chair Keyes read the resignation letter provided by Karla Hopkins. Chair Keyes thanked Karla Hopkins for all of her years of service and dedication and that he looks forward to seeing her during the Town Meetings. Selectman Arcudi stated that Karla has been an asset to Hopedale and thanked her for her service. Selectman Hazard stated that Karla will be missed on the Committees. Town Administrator Schindler thanked Karla for all of her help with the budget and on the Finance Committee.

Selectman Arcudi made a motion to accept the resignation of Karla Hopkins from the Hopedale Capitol Planning Committee and Finance Committee effective January 7, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Appointment of Becca Solomon as the Tree Warden, effective January 12, 2021

Chair Keyes read the email letter provided by Becca Solomon to the Town Administrator regarding the Tree Warden vacancy. Chair Keyes stated that he is very impressed with the level of course work and experience that Becca has. Town Administrator Schindler thanked Becca for stepping up in several roles in the Town. Town Administrator Schindler also thanked Walter Swift for offering to fill the Tree Warden position as well in Hopedale's time of need.

Selectman Arcudi made a motion to appoint Becca Solomon as the Hopedale Tree Warden, effective January 12, 2021. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

New Business*

License Agreement for Town Well Work

Town Administrator Schindler stated that the Water Sewer Commission is interested in storing some equipment on the Golf Course property. To limit the risk of the town and make this legitimate, the Town Administrator has drafted a license agreement. This agreement was reviewed and signed on Monday, Jan 11, 2021. This agreement stated that the Town can store an excavator and backhoe on the Golf Course property during the Water Sewer Commission's well exploration and the Water Sewer Commission can create an access road. Once completed the Water Sewer Commission will make sure there is no disturbance to the property.

Selectman Arcudi made a motion to approve the license agreement for the Town Well Work between the Town of Hopedale and the Hopedale Country Club. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Old Business

COVID Updates

Town Administrator stated that the Governor extended the restrictions through the end of January 2021. Due to this, the Town will continue with the current guidelines. The vaccinations have begun to be given to first responders.

Right of First Refusal, 364 West Street, *Attorney Peter F. Durning, Special Counsel*

Attorney Peter F. Durning stated that as of now there is nothing to report back to the broader group. The mediation process is a confidential process by agreement of the parties and the mediation process is not yet concluded. He assured the residents that if/when there is something to be considered at a public meeting, it will be posted, and the Board will follow up on that.

Public and Board Member Comments (votes will not be taken)

Correspondence and Selectmen Informational Items (votes will not be taken)

KP Law – Response to Public Records Request by John Deli Priscoli – December 31, 2020

Requests for Future Agenda Items:

Joint Meeting with Finance Committee, Tentative January 21, 2021, 7 pm – Town Administrator Schindler confirmed that this meeting will take place on Thursday, January 21, 2021 at 7PM.

Complete Streets Public Hearing, January 25, 2021, 7:15 pm – Town Administrator Schindler confirmed this meeting will take place on Wednesday, January 25, 2021 at 7:15PM

Joint Meeting with Planning Board for Board Appointment, TBD – Town Administrator stated that there is a candidate for this position, appointing this candidate will require a joint meeting. The Town Administrator has not yet heard from the Chair of the Planning Board regarding confirming a joint meeting date. The joint meeting will also be an opportunity for the Planning Board to provide updates to the Board of Selectmen.

Water Commission Vacancy – Town Administrator Schindler stated that as candidates come in she will discuss with the Water Commission. Currently, there are no candidates for this position. This appointment will require a joint meeting with the Board of Selectmen.

Selectman Hazard asked to revisit the item on a future agenda regarding the name change from Board of Selectmen to the Select Board.

Administrator Updates (In Packet)

Chair Keyes opened the meeting up for resident inquires:

Mr. Fahey asked Selectman Arcudi what his position is on the proposed development on 364 West Street and if so, why? Attorney Durning intervened and stated to Selectman Arcudi that he does not feel he needs to answer that question at this time. Attorney Durning stated that there are some aspects of the matter that are sensitive. Attorney Durning stated that the Board is committed to conducting a full deliberation in a public session if/when there is a matter to pursue. Mr. Fahey asked Attorney Durning what the statement of full transparency means? Will this take place at the end of mediation or during it? When will the public be updated? Attorney During responded that during the process there is not much that can be provided as this is a confidential process. Attorney Durning reiterated that the Board has committed to come back to the public and deliberating during public session if one is warranted.

Liz Reilly asked when the next session for mediation will take place? Attorney During stated that they will need to report back to the Court on January 25, 2021. Attorney During specified that this date is for the Board to report back to the Land Court regarding the status of the process. Attorney During stated that they are in the mediation process and cannot provide any dates pertaining to when the next mediation meeting will be.

Linda Sarkisian asked the Board, how long does mediation typically last? Attorney During responded that he is going to refer to his response to Liz Reilly, there is a date by which they need to report back to the Land Court regarding the status. Otherwise, they are in the mediation process.

Executive Session

Motion: Motion: To move into Executive Session, pursuant to M.G.L. c.30A, § 21(a) for item # (3): To discuss strategy with respect to litigation that an open meeting may have a detrimental effect on the litigation position of the public body and the chair so declares. Roll Call Vote

Purpose: Litigation strategy re: Town v. Jon Delli Priscoli, Trustee, et als, Attorney Durning present

Present: Chair Keyes, Selectman Arcudi, Selectman Hazard, Town Administrator Schindler, Attorney Durning, Eric Kelly – Environmental Partners

Selectman Hazard made a motion to move into executive session. Selectman Arcudi seconded the motion.

Roll Call Hazard – Aye, Arcudi – Aye, Keyes – Aye

Chair Keyes dissolved the meeting at 7:53PM

Submitted by:

Lindsay Mercier, Executive Assistant

Adopted: _____

**Special Meeting
Board of Selectmen
January 21, 2021
7:30 am**

Chair Keyes called the meeting to order at 7:31 AM

Pledge of Allegiance

Call Meeting to Order in Open Session

This meeting is exclusively for the purpose of mediation and will be held virtually through REBA Dispute Resolution, Inc. The Board will not be returning to open session.

Move into Executive Session

Motion: G.L. c. 30A, § 21 with respect to participation in mediations, c. 30A, § 21(a): 9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that: (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

REBA Dispute Resolution Mediation: Town of Hopedale v. Priscoli, et al; Land Court Docket No. 20 MISC 000467 (DRR) with Judge Leon J. LOMBARDI (retired) as mediator.

Selectman Arcudi made a motion to move to executive session. Selectman Hazard seconded the motion.

Arcudi – Aye, Hazard – Aye, Keyes – Aye

Close Executive Session

Dissolve Meeting

Chair Keyes dissolved the open meeting at 7:34 AM

Submitted by:

Lindsay Mercier, Executive Assistant

Adopted: _____

February 11, 2021

Brian Keyes
Louis Arcudi
Glenda Hazzard
78 Hopedale Street
Hopedale, MA 01747

Dear Mr. Keyes, Mr. Arcudi, and Ms. Hazzard-

The Bancroft Memorial Library has received a donation of \$1000 from the Hopedale Foundation.

Thanks to the generosity of organizations such as The Hopedale Foundation, we are able to maintain services and offer new ones that may not be within the means of our regular budget. We are grateful for this generous donation and appreciate your acknowledging and accepting this gift at your next meeting.

Best regards,

A handwritten signature in cursive script, appearing to read "Robyn York".

Robyn York

Director
Bancroft Memorial Library

THE HOPEDALE FOUNDATION
P. O. Box 123
HOPEDALE, MA 01747-0123

February 5, 2021

Robyn York
Bancroft Memorial Library
50 Hopedale Street
Hopedale, MA 01747

Dear Robyn,

It is a pleasure for me to advise you that at a recent meeting the Trustees of The Hopedale Foundation voted to contribute \$1,000 to the Bancroft Memorial Library.

The enclosed check represents The Hopedale Foundation's 2021 annual contribution.

Sincerely,
The Hopedale Foundation



Michael A. Diorio
Administrator

HOPEDALE FOUNDATION
PO BOX 123
HOPEDALE, MA 01747

ROCKLAND TRUST

11812

13-447/113

CHECK NUMBER

2/4/2021

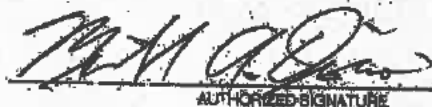
PAY TO THE
ORDER OF Bancroft Memorial Library

\$ 1,000.00

One Thousand and 00/100

DOLLARS

Bancroft Memorial Library
50 Hopedale Street
Hopedale, MA 01747


AUTHORIZED SIGNATURE

MEMO

**TOWN OF HOPEDALE
BOARD, COMMISSION OR COMMITTEE
TALENT BANK FORM**

Local Government needs citizens to give of their time and talents serving the Town of Hopedale. A Talent Bank has been established to compile a list of interested citizens, willing to serve on a voluntary basis on boards, commissions and committees. Some groups meet often, others require less time, and still others are busy only at specific times of the year. Occasionally, there are requirements for ad hoc committees or sub-committees appointed to work on specific projects. Experience indicates that the two most appropriate qualities for successful service are an open mind and exercise of common sense.

If you are interested in serving, please list the position(s) you wish to be considered for:

Board, Commission or Committee applying for:

WATER & SEWER COMMISSION

Please return completed forms to:

Town Administrator's Office – Hopedale Town Hall 78 Hopedale Street, Hopedale, MA 01747

The Town Hall mailing address is: P.O. Box 7, Hopedale MA, 01747

Please Note:

- > The Board of Selectmen may fill vacancies until next election.
- > It is recommended that you attend a few meetings of the committee or board you are contemplating joining to help determine your interest.
- > The board/committee will be asked for their recommendation on each applicant appointment.

Name: DONALD COOPER Are you a registered voter? ☒ Yes ☐ No

Address: [REDACTED] How long have you lived in Hopedale? 40+ YEARS

Home Phone: [REDACTED] Cell Phone: [REDACTED] E-Mail: [REDACTED]

How would you like to be contacted? CELL PHONE

Occupation: ASST. SUPERINTENDENT MEDWAY WATER & SEWER

Please list any potential conflicts of interest, e.g. membership in an organization or your business: NONE

Education and Experience: 16+ YEARS MUNICIPAL WATER & SEWER
10+ YEAR WATERWORKS INDUSTRY Grade 2D + 2T WATER LICENSE

How many times during the last year have you attended a meeting of the Board/Committee to which you are requesting appointment? 0

Have you ever had business before the Board/Committee to which you are requesting an appointment?

☐ Yes ☒ No If yes what type of business? _____

Special interests and skills: BUDGETS / EPA + STATE REPORTING

Activities, e.g. Government/Civic & Community/Charitable & Educational: _____

Reasons for wanting to serve: Long time resident FORMER SUPERINTENDENT

Hopedale WWTP

The completion of this form in no way assures appointment. Citizens deemed most qualified to serve in a particular capacity will fill all board, commission or committee vacancies.

Applicant's Signature

Ronald L. Coope

Date

1/14/2021

February 10, 2021

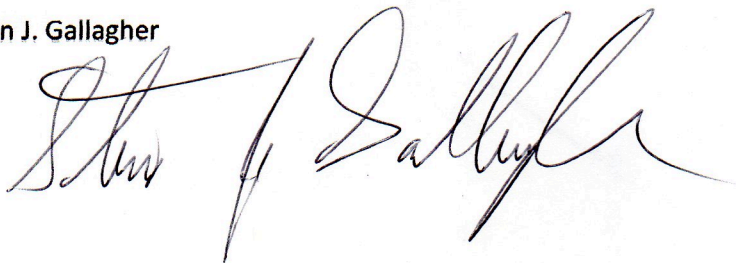
To Hopedale Selectman,

I am sorry to say after almost 30 years on the ZBA, I am resigning due to selling my house and moving out of town. I also am resigning from my position on the Planning Board for the same reason, after about 12 years. It has been interesting and a pleasure to serve the town, that my wife and I have lived

In for 38 years and raised our 3 children in.

Thank you

Steven J. Gallagher

A handwritten signature in dark ink, appearing to read "Steven J. Gallagher". The signature is fluid and cursive, with a long horizontal stroke extending from the "S" across the middle of the name.

Effective as of Feb. 10, 2021



P.O. Box 770001
Cincinnati, OH 45277-0053

SP 01 000029 30326 H 1 ASNGLP
BKLOCCBBBBJLR
TOWN OF HOPEDALE
78 HOPEDALE ST
HOPEDALE, MA 01747-1742

000029 1/1

January 22, 2021

Dear Sir or Madam:

We are delighted to provide you with the attached check for **\$21,000.00**. This Fidelity Charitable Donor-Advised FundSM grant was made at the recommendation of a Fidelity Charitable donor who wishes to remain anonymous.¹

This grant is made by Fidelity Charitable. Fidelity Charitable's donor recommends the grant be used for the following purpose (which does not constitute a restriction): **for Hopedale Town Park Playground repairs and improvements**. This grant is to be used exclusively for charitable purposes, and is not made for the purpose of influencing legislation. This grant is also subject to the "Grant Terms" on the next page. If you are unable or unwilling to meet these grant conditions, you must return these funds to Fidelity Charitable.

¹ Fidelity Charitable is an independent public charity that sponsors a donor-advised fund program. In a donor-advised fund, Donors make irrevocable charitable contributions to Fidelity Charitable, and have the privilege of recommending grants to qualified public charities.

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DCC_CEBKLQCCBBBBJLR_BBBBBB 20210122 PLEASE FOLD AND DETACH AT PERFORATION BEFORE PRESENTING CHECK FOR PAYMENT

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.



P.O. Box 770001
Cincinnati, OH 45277-0053
800-952-4438

PAYABLE AT: THE BANK OF NEW YORK MELLON
EVERETT, MA 02149
53-292/113

10728514

January 22, 2021

PAY TO
THE
ORDER
OF
TOWN OF HOPEDALE

\$21,000.00

*****Twenty One Thousand & 0/100 DOLLARS

VOID AFTER 60 DAYS

Security features included on back.

ENTER YOUR NAME AND ADDRESS HERE

The Finance Committee and the Planning Board recommended favorable action on the following Article:

ARTICLE 5. Voted that the Town vote to make the following changes and amendments to the Town of Hopedale Zoning By-Laws, as printed in the warrant for this Special Town Meeting, by standing vote:
Yes 0- No.

The Finance Committee and the Planning Board also recommended favorable action on the following Article:

ARTICLE 6. Voted that the Town amend the Zoning By-Law of the Town of Hopedale by amending the "Town of Hopedale Zoning Map dated May 1, 1973," by rezoneing from commercial district to Historic Multiple Family District the following described property to wit:

The land located within the area of intersection of Social Street, Dutcher Street, Freedom Street and Hopedale Street,
by unanimous voice vote.

ARTICLE 7. Voted that the Town accept as a gift from Virginia A. and Edward D. Larkin, a 30 foot wide paved access road into the Hopedale Parklands from the present end of the pavement on Overdale Parkway approximately 703 feet, more or less, northerly into the parklands, all as shown on the plan attached to this warrant entitled, "PLAN OF LAND IN HOPEDALE, MASS. showing paved road donated to the Town of Hopedale under Article 7 of the 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. Scale 30 feet to an inch. Dated June 1, 1985, Guerriero & Hannon, Inc., Engineering and Land Surveying, 326 West Street, Milford, Mass."

Said road to be constructed according to specifications prepared by the donors and approved by the Road Commissioners.

The Town in accepting said gift hereby 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. No other lots not shown on this plan shall have any of the foregoing rights and 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. The Town agrees to maintain said paved road to the same extent and in the same manner as it does other ways in the Town. The Town hereby reaffirms the dedication of the area between the Cox and Larkin parcels, as shown on said plan under the jurisdiction of the Park Commissioners. The Selectmen are authorized to petition the legislature for any authority or permission that may be required to implement this Article.

The acceptance of the gift and the granting of the rights and
concessions hereunder shall take effect on the date that the Board
of Selection makes an acceptance of the gift to be recorded in the
Warrenton District Registry of Deeds along with the official plan.
On motion by Selection Robert S. Phillips warrant was allowed by
unanimous vote at 9:15 P.M.

A TRUE COPY

ROBERT S. PHILLIPS
TOWN CLERK

MINUTES OF THE SPECIAL TOWN MEETING JUNE 24, 1985

The Special Town Meeting was called to order at 7:30 P.M. by Moderator Edwin Howard. 113 voters having been checked in by the Registrar, a quorum was declared present.

The Finance Committee recommended favorable action on the following Article:

ARTICLE 1: Voted to transfer the following amounts to cover deficits in various accounts:

From Interest on Note 378 to Interest on Loan, Overlay Deficit	250.00	to Fire Department
From Principal on Note 377 to Interest on Loan, Overlay Deficit	250.00	to Fire Department
From Loan on Overlay Deficit to Interest on Loan, Overlay Deficit	250.00	to Fire Department
From Interest on Loan Overlay Deficit to Interest on Municipal Garage	250.00	to Fire Department
for a total new balance on Loan Overlay Deficit of.....	1,000.00	
From Loan Overlay Deficit 750.74 to Highway Department	750.74	to Highway Department
From Board of Health 400.00 to Highway Department	400.00	to Highway Department
From Cypres North Control 350.00 to Highway Department	350.00	to Highway Department
for a total transfer of.....	1,500.74	
From Street Lighting 250.00 to Fire Department	250.00	to Fire Department
for a total transfer of.....	250.00	
From Street Lighting 250.00 to Police Department	250.00	to Police Department
From Historical Commission 100.00 to Police Department	100.00	to Police Department
From Town Insurance 1,900.00 to Police Department	1,900.00	to Police Department
for a total transfer of.....	2,250.00	
From Town Insurance 500.00 to Group Insurance	500.00	to Group Insurance
for a total transfer of.....	500.00	
for a grand total of	4,750.74	

and it was further Voted that any other unexpended funds in various department accounts remaining after the close of the current fiscal year shall be transferred by the Town Accountant to the Interest on Loans Account, to reduce the deficit in that account, by unanimous vote.

The Finance Committee also recommended favorable action on the following Article:

ARTICLE 2: Voted to release and appropriate the following money from the Reserved for Appropriation Account to increase the amount voted under Article 12, of the Annual Town Meeting of April, 1984:

Group Insurance	86,810 to 88,010
Local Increase of.....	1,200.00
Local that Plant	12,600 to 19,200
Local Increase of.....	6,600.00
Local that Temporary Loans 20,000 to 23,195	
Local Increase of.....	3,195.00
Local amount to be raised.....	\$10,995.00,

The Finance Committee recommended favorable action on the following Article:

ARTICLE 3, Voted that the town petition the General Court as follows:

Section 1. Notwithstanding the provisions of section sixty-three of Chapter forty-four of the General Laws or any other general or special law to the contrary. The Town of Hopdale is hereby authorized to credit the proceeds of the sale of the Birmingham House, located at 35 Adin Street, Hopdale, Massachusetts, land and building, to the general fund of the Town of Hopdale, and to use said fund for any purposes for which towns are authorized to appropriate funds as may be determined by the voters of Hopdale at an annual or special town meeting.

Section 2: This act shall take effect upon it's passage.

The Finance Committee and the Planning Board recommended favorable action on the following Article:

ARTICLE 4, Voted that the Town amend the Zoning By-Law of the Town of Hopdale by amending the "Town of Hopdale Zoning Map, 1973", by changing the following designated parcels from

to a parcel of land, with building thereon, situated at South Main Street, in Hopdale, Worcester County, and being described as follows:

Beginning at a point on the Northerly side of South Main Street, being 100' of Paul F. and Brenda E. McGonnel, then easterly a distance of 254.00 feet to a point; then southerly along property of Robert J. Mallard a distance of 17.00 feet to a point at Hartford Avenue; then westerly along said Hartford Avenue, a distance of 286.50 feet

then northerly along South Main Street, a distance of 201 feet to a point of beginning. Said parcel containing 56,344 square feet. Article passed by unanimous voice vote.

John M. Pedersen

A true copy, ATTEST
Town Clerk

(3)

From Group Insurance 86,810 to 88,010
 for a total increase of..... 1,200.00
 From Central East Plant 12,600 to 19,200
 for a total increase of..... 6,600.00
 From Interest on Temporary Loans 20,000 to 23,195
 for a total increase of..... 3,195.00
 total amount to be raised..... \$10,995.00,
 by unanimous voice vote.

The Finance Committee recommended favorable action on the following Article:

ARTICLE 3. Voted that the town petition the General Court as follows:

Section 1. Notwithstanding the provisions of section sixty-three of Chapter forty-four of the General Laws or any other special or special law to the contrary - The Town of Hopdale is hereby authorized to credit the proceeds of the sale of the Kocempagat House, located at 35 Ada Street, Hopdale, Massachusetts, land and building, to the general fund of the Town of Hopdale, and to use said fund for any purpose for which town funds are authorized to appropriate funds as may be determined by the voters of Hopdale at an annual or special town meeting.

Section 2. This act shall take effect upon its passage.

The Finance Committee and the Planning Board recommended favorable action on the following Article:

ARTICLE 4. Voted that the Town amend the Zoning By-Law of the Town of Hopdale by amending the "Town of Hopdale Zoning Map, dated May 1, 1973", by changing the following designated parcels from R3 to C:

A certain parcel of land, with building thereon, situated on South Main Street, in Hopdale, Worcester County, and being described as follows:

- Beginning at a point on the Northerly side of South Main Street, along land of Paul F. and Brenda B. McDermott;
 - THENCE Easterly a distance of 234.00 feet to a point;
 - THENCE Southerly along property of Robert J. Wallard a distance of 227.00 feet to a point at Hartford Avenue;
 - THENCE Westerly along said Hartford Avenue, a distance of 284.20 feet;
 - THENCE Northerly along South Main Street, a distance of 201 feet to the point of beginning.
- Said parcel containing 56,344 square feet.
- Article passed by unanimous voice vote.

* An amendment was presented by Superintendent of Schools Donald Rogers allow these funds to go into the Hopdale Endowment Trust Fund. The Administrator John Baynes questioned the legality of this amendment, stating that the article in the warrant was not broad enough to allow consideration by the meeting. Moderator Howard ruled that the Town Administrator's question was in order and ruled the amendment out of order.

The Finance Committee and the Planning Board recommended favorable action on the following Article:

ARTICLE 5. Voted that the Town vote to make the following changes to the Town of Hopdale Zoning By-Law, as printed in the warrant for this Special Town Meeting, by standing vote:

The Finance Committee and the Planning Board also recommended action on the following Article:

ARTICLE 6. Voted that the Town amend the Zoning By-Law of the Town of Hopdale by amending the "Town of Hopdale Zoning Map dated May 1, 1973" by rezoning from commercial district to Historic Single Family District the following described property to wit:

Land located within the area of intersection of Social Street, Freedom Street and Hopdale Street, by unanimous voice vote.

ARTICLE 7. Voted that the Town accept as a gift from Virginia A. Larkin, a 30 foot wide paved access road into the Hopdale from the present end of the pavement on Overdale Parkway (100 feet, more or less, northerly into the parcel), all to the plan attached to this warrant entitled, "PLAN OF LAND MASS, showing paved road donated to the Town of Hopdale of the June 24, 1985 Special Town Meeting by Virginia A. Larkin and the limits of the right of way granted to lots 1, 2, 3, 4, on the Easterly side and the owners of 3.6 on the Westerly side and the area rededicated to park 50 feet to an inch. Date June 1, 1985, Guerriere & Baldwin, Planning and Land Surveying, 326 West Street, Milford, Mass."

be constructed according to specifications prepared by and approved by the Road Commissioners.

accepting said gift hereby grants, upon the effective date of this act, as set forth hereinafter, to the owners of the lots shown on said plan, their heirs and assigns, the perpetual easement to pass and repass from each lot shown on said plan over said road and over said access road to Overdale Parkway and to use said road for all purposes that public ways are used in the Town and if any lot owner shown on this plan shall have any of the easements have been granted allows any such other lot owner to use a lot shown on this plan without authorization of a Hopdale then the rights and easements granted to said lot owner shall not be relinquished without the consent of the Town. The Town agrees to maintain said paved road to the same standard as it does other ways in the Town. Any reaffirm the dedication of the area between the Cox parcels, as shown on said plan under the jurisdiction of the Town. The Selectmen are authorized to petition the State for any authority or permission that may be required by this article.

A true copy, ATTEST
Wm. M. [Signature]
 Town Clerk

5

The acceptance of the gift and the granting of the rights and easements hereunder shall take effect on the date that the Board of Selectmen causes an acceptance of the gift to be recorded in the Worcester District Registry of Deeds along with the aforesaid plan. On motion by Selectman Robert E. Barrows warrant was dissolved by unanimous voice vote at 9:35 P.M.

A TRUE COPY

ATTEST:
ROBERT S. PHILLIPS
TOWN CLERK

Joe M. Phillips
A true copy, ATTEST
Town Clerk

that change in the building was caused by the firm.

another

in other business, as some said

when no answer is given
committee to be comprised of Town

MILFORD, Page 4

Hopedale Votes New Zoning District

By CLARA McLAUGHLIN
Daily News Staff

HOPEDALE — At a special Town Meeting that lasted longer than an entire session of this year's annual Town Meeting, 115 Hopedale voters last night created a new zoning district for the downtown area. They also acted to enable town officials to accept the paving of a Parkside access road as a gift and to change the zoning of a parcel of land on South Main Street.

Almost half of last night's two-hour session was with discussion of the pair of articles which together created the new zone — a Historic Main-County (HMC) district — and passed a parcel

bounded by Dutcher, Freedom, Hopedale and Social Streets from commercial use to the town's first HMC.

Three articles, placed in the warrant by the Planning Board on behalf of W. C. McLaughlin, president of Hopedale and Underbridge, had received the unanimous recommendation of that board last week. And last night they got the unanimous approval of voters as almost all who spoke on the articles were seeking clarification, not voicing opposition.

Last night's action paves the way for W. C. McLaughlin to convert the former Dutcher Street School into middle and

and required almost every other type of business to obtain a special permit from the Zoning Board of Appeals (ZBA) before moving into the HMC.

"My client is going to spend the kind of money it will take to rehabilitate the Dutcher Street School, he will certainly not want to see something offensive go in right beside it," Ambler told voters.

Ambler and Planning Board member James Hanna both pointed out the creation and implementation of the HMC provided an acceptable way to re-zoning the three buildings

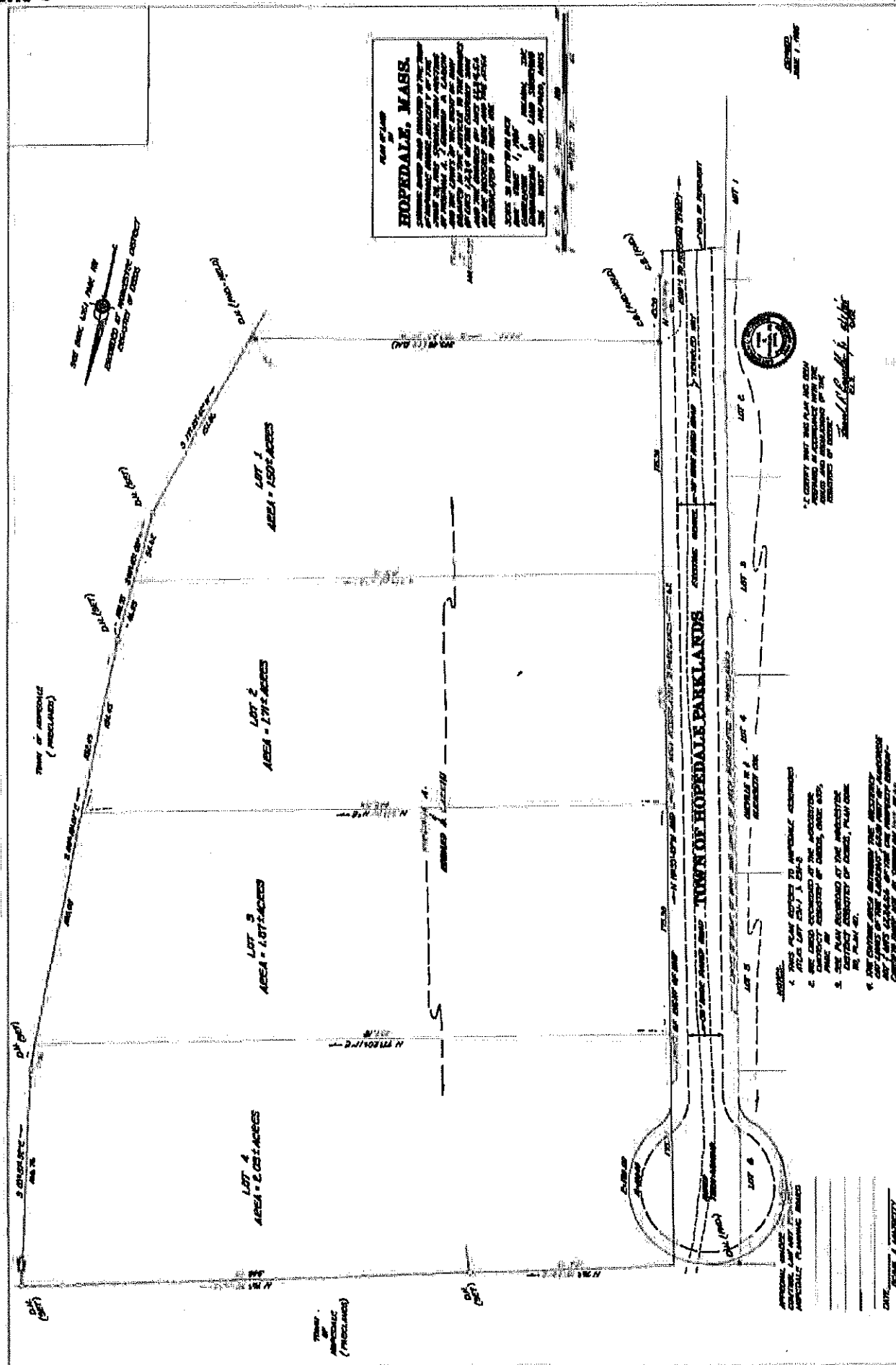
high income townhouse-type residences.

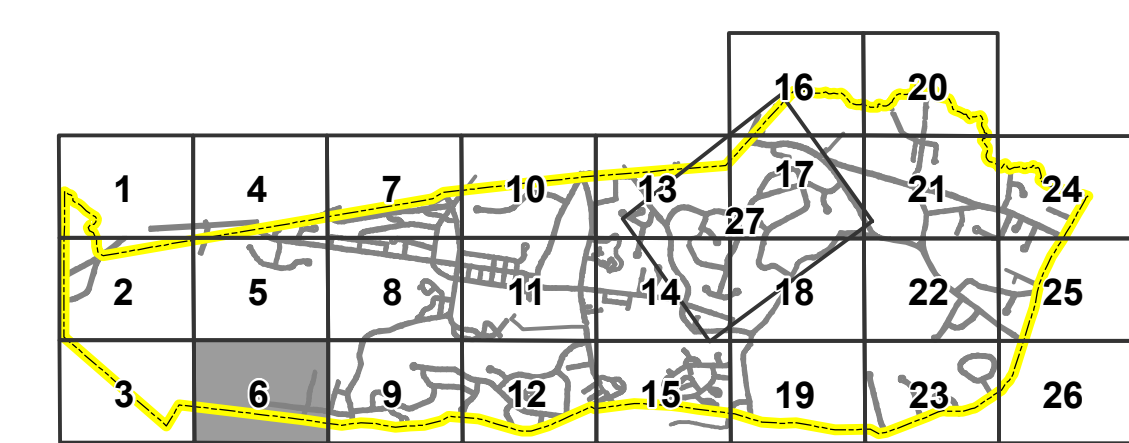
The developer also has tentative plans to convert the former Draper main office building and the old Draper filling station — also included in the designated parcel — into commercial condominiums and rental space although the eventual fate of these buildings was not discussed last night.

Lee Ambler, the attorney representing W. C. McLaughlin, said voters his clients have not decided exactly how the old administration building and gas station will be used, but he noted the HMC district as proposed banned "the most offensive commercial uses" from the area.

HOPEDALE, Page 4

9





Flood data derived from the Federal Emergency Management Agency (FEMA) Digital Flood Insurance Rate Map (DFIRM) as of 07/04/2011.

- Railroad

Road

Pools

Buildings (MassGIS)

Condo

Adjacent Map Parcels

Water

Wet Areas

Streams

Easements

Rail

Parcel Boundary

Road Right of Way Boundary

Water

Town Boundary

100-year Flood Area

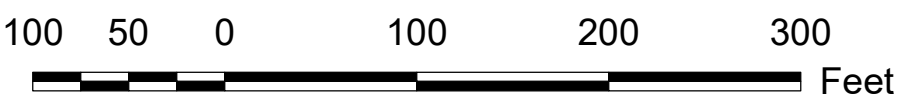
500-year Flood Area

TOWN OF HOPEDALE

MASSACHUSETTS

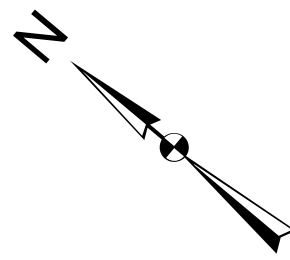
ASSESSORS ATLAS

AS OF JUNE 28, 2020



1 inch = 100 feet

GRID NORTH



MASSACHUSETTS
COORDINATE
SYSTEM

REVISION DATES			
Date	Checked By	Date	Checked By

CONDO NOTE: Parcels indicated as Condos do not necessarily have land area associated with the structure. The parcels associated with these structures are separated for assessing purposes only. Condo unit outlines represent the general location of the unit and are approximated based on planimetric building footprints.

Plans shown herein are compiled from aerial photographs, deeds, and plans of record and are not to be construed as having sufficient accuracy for conveyances.



SHEET NO.
6

Fun Day rounded out a very full summer.

- * Park playground equipment upgraded

A generous grant from the Hopedale Foundation allows for the replacement of the 51 yr old jungle Jim and horizontal bars with a rock climber tower, a tire swing, and three kiddie spring rides. Also, based on resident feedback, sturdy composite benches and picnic tables were added inside the playground area.



High school soccer moves to Mellen Field

Games and practices switch venue from Draper Field.

Parkland dispute at Overdale Parkway

Park Commission asked to rule in land dispute between Blackbrook Realty Corp. and residents of Overdale Parkway. Land in question involves several hundred feet of roadway extending from the current Parklands gate into what has always been considered an entrance to the Parklands. The Old Salt Box road parcel also came into question. When the Commission received a legal ruling from Town Council stating that the disputed land was not Parkland property, it disengaged from further involvement, but not without a word of caution *"...that it would not tolerate the privatization or commercialization of a single square inch of Parkland property - land obtained by our Town forefathers for both active and passive recreation purposes - without exhausting every legal avenue at the our disposal if need be."*

- * Ad-hoc committee formed to find field space

The Hopedale Athletic Recreational and Fields Committee (HARF), a cross-section of residents and Town officials organized in 1999 by the School Committee to seek new land for facilities and fields, becomes an ad-hoc group under the Park Commission. Exploratory funding of \$3000 granted at Town Meeting.

Vehicle Fair held at Town Park

Fundraiser for the school department's Bright Beginnings pre-school. Service trucks, town rescue and highway vehicles, and a fly-in by the Massachusetts Air National Guard helicopter highlight the day.

2001

Budget: n/a

Brett Boyd named Park Director

Pond attendance: n/a Daily high: n/a Swim lessons: n/a
Assisted by Cassie Parrott

- * Soccer agreement terminated and re-written

The Commission voided the existing agreement with Milford/Hopedale Youth Soccer after it was discovered that individuals on their Board had given unauthorized, non-league affiliated, out-of-town teams permission to use at Mellen Field. A new MHYSA board was elected and a formalized, legal document specifically outlining exact usage guidelines was established and agreed to by all. The new contract runs three years, expiring in 2004.

- * Irrigation well installed at Mellen Field

With dry summer conditions and skyrocketing water bills the Park Dept., with funding provided by MHYSA, installs a well at Mellen. *"The sprinkler installation was completed without a dime of taxpayer's money, and it should pay for itself in two years..."*

- * Shed roof dugouts installed at Mellen Field

Built by volunteers from the Hopedale Girls Softball Association

Weed Control maintenance program returns

\$9,000 allocated for spot treatment of lower Pond.

- * Bandstand repairs made

Vandalized 2X4 wooden railings on the bandstand, are replaced with sturdy, custom-made, wrought iron rails and a lockable gate. New wrought iron stairs also installed. Cost: \$5,700. Signs are posted requesting people to keep off this unique, 86 year old structure.

YEAR	MILESTONE	NOTES OF INTEREST
1899	Park Commission Formed (3/6)	Startup budget: \$12,000 / annual budget: \$2,500 - approved by town meeting. <i>The first necessity: "A public play ground of suitable contour for such as baseball, football etc. requiring a large acreage of fairly level land."</i>
	* Town Park land acquired (7/21)	\$900 paid to Henry L. Patrick for 11.43 swampy, rocky acres
	* First Parkland parcels acquired	\$3,917 paid to various landowners for 178.11 acres. On pond's West shore: land between the water and railroad tracks; and land between the railroad tracks and the top of Darling Hill. East side of pond: land from the intersection of Hopedale and Freedom streets to Hazel St.
	* Stone wall built around Park	All stone taken from excavation/clearing of property.
1900	Budget: \$2,500	
	* Swamp at Town Park drained	Land graded, drainage system installed
	* Rawson's Bridge constructed	Wooden bridge at North end of pond connects both shorelines
	* Town Park land dispute	H.L. Patrick returns \$900 for land, demands more money. Town to let court decide issue.
	* Adin Ballou homestead lot acquired (5/29)	Deed for 1/2 acre lot donated to Park Comm. along with \$600 to start a maintenance trust fund. Lot designed by Warren H. Manning
	* Ballou Statue dedicated October 27th	8' high statue of Roman bronze, weight:1600 lbs. Modeled by William Ordway Partridge of New York City and Milton, MA. Casting done in New York City. 8' high pedestal of Cape Ann granite designed by Daniel Woodbury of Boston, MA.
1901	Budget: \$2,500	
	* Original Town Park plans completed	Patrick land suit over Park grounds remains in litigation
	Trees planted at Town & Ballou Parks	
	* First tennis court built	Dirt surface
	* Temporary bandstand erected	
	Park garage built	
	* Large & small ballfields constructed	
	Rawson's Bridge raised	Mistakenly built too low - boats couldn't pass under.
	* Hazel St. entrance built	Road cut to west side of bridge connecting to railway line.
	Maroney's Grove picnic area built	Picnic area in a majestic pine grove off of Hazel St. entrance
	First Park Field Day Celebration - July 4th	Became a Town tradition for decades
1902	Budget: \$2,500	
	* First Park Superintendent hired	Fred A. Smith - naturalist & forester. Tree nursery set up.
	* Second tennis court built	Dirt surface

27. Prescription is Black Brook's only hope of establishing Overdale Parkway as a public way. Overdale Parkway is owned by the town. It is used for access to the houses abutting it and to the town park. The town maintains Overdale Parkway along its paved portion, that is, from Freedom Street to the Coleman/Parker lot. It may well be that Overdale Parkway has become public over its paved portion, although the matter is not completely clear. The predominant use of Overdale Parkway appears to have been by persons owning the lots which abut it, or their invitees. That may not be enough to establish rights in anyone else. The town's maintenance of the paved portion suggests the town views the paved portion as open to anyone. However, that may simply be a reflection of the fact that the town views Overdale Parkway as access to the park land. Also, prescription is a puzzling concept in this context, since the town, as owner, has been content to have Overdale Parkway used, rendering questionable whether use has been adverse and not permissive. Finally, there is a question whether Overdale Parkway is held by the town in a manner or capacity such that prescriptive rights could be obtained over it.

28. I do not have to reach a hard conclusion as to the public way status of the paved portion of Overdale Parkway, however. Whatever the status of the paved portion, I conclude the unpaved portion is not public. If, indeed, anyone has prescriptive rights in the unpaved portion, those rights would be limited to use for access to the park. Black Brook needs rights in the entire length of Overdale Parkway and, as stated, its best case is that Overdale Parkway is a public way, and that, as stated, is true only as to the unpaved portion.

29. Because of Black Brook's lack of a legal right to use Overdale Parkway over its entire length, the decisions of both boards were beyond their authority and are annulled.

Judgment in both cases accordingly.

Peter W. Kilborn
Peter W. Kilborn
Chief Justice

Dated: January 8, 2003

11

LEONARD KOPELMAN
DONALD G. PAIGE
ELIZABETH A. LANE
JOYCE FRANK
JOHN W. GIORGIO
BARBARA J. SAINT ANDRE
JOEL B. BARD
JOSEPH L. TEHAN, JR.
THERESA M. DOWDY
DEBORAH A. ELIASON
RICHARD BOWEN
DAVID J. DONESKI
JUDITH G. CUTLER
KATHLEEN E. CONNOLLY
DAVID C. JENKINS
MARK R. REICH
BRIAN W. RILEY
DARREN R. KLEIN
JONATHAN M. SILVERSTEIN
ANNE-MARIE NYLAND

EDWARD M. REILLY
DIRECTOR WESTERN OFFICE

WILLIAM HEWIG III
JEANNE S. MCKNIGHT
KATHLEEN M. O'DONNELL

KOPELMAN AND PAIGE, P. C.

ATTORNEYS AT LAW

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THOMAS R. LANE, JR.
MARY L. GIORGIO
THOMAS W. MCENANEY
KATHARINE GOREE DOYLE
GEORGE K. FUCCI
LAUREN F. GOLDBERG
JASON R. TALERMAN
JEFFREY A. MONIG
MICHELE E. RANDAZZO
GREGG J. CORBO
RICHARD T. HOLLAND
LISA C. ADAMS
ELIZABETH R. CORBO
MARCELINO LA BELLA
VICKI S. MARSH
JOHN J. GOLDBROSEN
SHIRIN EVERETT
BRIAN E. GLENNON, II
JONATHAN D. EICHMAN
JOSEPH S. FAIR
LAURA H. PAWLE
JACKIE COWIN
SARAH N. TURNER
JEFFREY T. BLAKE
CAROLYN M. MURRAY
R. ERIC SLAGLE

June 21, 2004

**BY FACSIMILE - (508) 634-2200
AND BY FIRST CLASS MAIL**

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

Re: Coleman v. Hopedale Planning Board
Land Court Misc. No. 263637

Coleman v. Mendon Planning Board
Land Court Misc. No. 263677

Dear Members of the Planning Board:

As you know, on January 8, 2003, the Land Court (Kilborn, C.J.) issued a decision in the above-captioned consolidated matters finding that the approvals of both the Hopedale and Mendon Planning Boards of a definitive plan entitled: "Old Saltbox Hill," exceeded the Boards' respective authority, and annulling those approvals ("Decision"). The subdivision applicant, Black Brook Realty, subsequently appealed the Decision, and on June 8, 2004, the Appeals Court issued a decision denying Black Brook's appeal and upholding the Decision. A copy of the Appeals Court decision is enclosed for your reference.

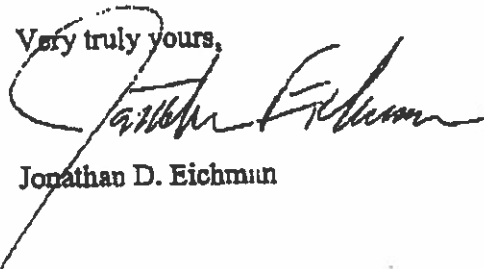
The heart of the Appeals Court's decision is its holding that a planning board has the authority, even absent that board's express regulation, to consider whether there exist legal rights sufficient to allow owners of proposed subdivision lots to access those lots from public ways, and may not properly approve a definitive subdivision plan when such rights do not in fact exist as shown on the plan. The Court did not disturb the Land Court's finding that Black Brook did not have a right of access over one of the two means of access shown on its definitive plan

Planning Board
June 21, 2004
Page 2

(regardless of the fact that the Planning Board did not consider the issue in reaching its decision), and thus affirmed the Land Court's annulment of the definitive plan approvals.

Black Brook has twenty days from the date of the Appeals Court decision in which to file an application for further appellate review. I will inform you if I receive notice that such an application has been filed. Please do not hesitate to contact me if you have any questions or would like further assistance regarding the above.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jonathan D. Eichman", is written over a horizontal line.

Jonathan D. Eichman

JDE/smm

Enc.

cc: Board of Selectmen

224164/HOPD/0022

NOTICE: The slip opinions and orders posted on this Website are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. This preliminary material will be removed from the Website once the advance sheets of the Official Reports are published. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, Room 1407, Boston, MA 02108; (617) 557-1030; clifford.allen@sjc.state.ma.us

Lynn H. PARKER & others [FN1] vs. BLACK BROOK REALTY CORPORATION.

No. 03-P-354.

February 11, 2004. - June 9, 2004.

Present: Doerfer, Cohen, & Mills, JJ.

Subdivision Control, Approval of plan, Planning board, Regulations. Municipal Corporations, Planning board. Planning Board.

Civil actions commenced in the Land Court Department on April 25, 2000, and April 28, 2000.

After consolidation, the cases were heard by *Peter W. Kilborn, J.*

John D. Powers for the defendant.

Mark S. Bourbeau for the plaintiffs.

MILLS, J.

Abutters appealed approvals of a definitive subdivision plan of land located partly in the town of Mendon and partly in the town of Hopedale. A Land Court judge determined that the subdivision proponent, Black Brook Realty Corporation (Black Brook), did not have the legal right to use certain of the land that provided access from the exterior of the subdivision to the nearest adjacent public way. Black Brook appeals the judgments annulling the approvals by the towns' planning boards of the definitive subdivision plan. We affirm.

Black Brook requested from the Mendon and Hopedale planning boards their approvals of a forty-two lot subdivision that was located partly in each town. As shown on the sketch in the appendix to this opinion, the plan contains two connection points of its interior ways with Overdale Parkway (parkway), a roadway exterior to the subdivision and owned by the town of Hopedale, though not established as a public way. Black Brook intended to reach the closest public way, Freedom Street, exclusively by way of the parkway. The two boards approved the subdivision. The Hopedale board did not consider the abutters' objection that Black Brook had no legal right to use the parkway. That board commented that "[t]his is a legal issue and will not be determined by the [b]oard." The abutters appealed pursuant to G.L. c. 41, § 81BB, and a Land Court judge annulled the decisions of both boards after determining that Black Brook lacked the legal right to use at least the unpaved portion of the parkway, an essential component of the subdivision's proposed access to Freedom Street.

The judge noted that the rules and regulations of neither board expressly require that the applicant have rights in the adjacent ways if they are necessary components of the proposed access to public ways. He considered whether the absence of such regulations made consideration of legal access ultra vires to the boards' evaluation and approval of the plan. He concluded that this case, like *Beale v. Planning Bd. of Rockland*, 423 Mass. 690, 694- 697 (1996) (*Beale*), is an exception to *Castle Estates, Inc. v. Park & Planning Bd. of Medfield*, 344 Mass.

329, 334 (1962) (*Castle Estates*), and that the general purposes clause in G.L. c. 41, § 81M, provides authority for the boards, and the reviewing court, to consider Black Brook's legal right to the access road outside the subdivision, even absent express regulation. We agree.

Castle Estates reiterated that planning board regulations must be "comprehensive, reasonably definite, and carefully drafted, so that owners may know in advance what is or may be required of them and what standards and procedures will be applied to them." 344 Mass. at 334. The court said that "[w]ithout such regulations, the purposes of the law may easily be frustrated." *Ibid.* "A planning board exceeds its authority if requirements are imposed beyond those established by the rules and regulations." *Beale*, 423 Mass. at 696. In *Beale*, the court held that the planning board's authority under the general purposes clause (G.L. c. 41, § 81M) to enforce the zoning by-laws provided a basis for the disapproval of the subdivision plan, where the proposed use of the land in question, to provide access to a proposed retail shopping mall on adjacent land in another town, was not an allowable use in the district and would violate the zoning by-law. *Id.* at 693-697. Section 81M of G.L. c. 41, as amended by St.1969, c. 884, § 2, expressly admonishes planning boards to exercise their powers under the Subdivision Control Law "with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel ... and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions." The court in *North Landers Corp. v. Planning Bd. of Falmouth*, 382 Mass. 432, 436-437 (1981), affirmed the authority of a planning board to evaluate the adequacy of ways outside the subdivision, under a properly drawn local subdivision regulation. [FN2] Black Brook relies upon *Hahn v. Planning Bd. of Stoughton*, 24 Mass.App.Ct. 553, 555-556 (1987), in its argument that the board and court are without authority to consider questions of Black Brook's rights in the parkway, and that a planning board may not consider the matter of title. However, *Hahn* stands for the more limited proposition that a planning board's subdivision approval is not invalid because it fails to determine questions of the subdivider's title, where those questions do not adversely affect development or use of the subdivision. By contrast, the abutters' challenge to Black Brook's rights in the parkway goes to the very heart of the proposed development--the locus has been left without one of the two means of access upon which the boards predicated their approvals. It is well settled that a planning board is entitled to require an applicant for subdivision approval to demonstrate ownership of the subdivided land. *Batchelder v. Planning Bd. of Yarmouth*, 31 Mass.App.Ct. 104, 107-108 (1991). The regulations of the Hopedale and Mendon planning boards have such an express requirement. Ownership of access rights on which the proposed subdivision depends is no less consequential.

Judgments affirmed.

1. Denise Linder, Douglas Moore, Kennett G. Coleman, Colleen M. Strapponi, Mark S. Strapponi, Marjorie O. Clinton, Elizabeth M. Benney, and David J. Benney.

2. The court reserved the question whether inadequacy of a public way alone could justify disapproval of a subdivision plan. *North Landers Corp. v. Planning Bd. of Falmouth*, 382 Mass. at 437 n. 6. Here, of course, there is no contention that the parkway is public and, indeed, Black Brook has no legal right to its use.

RUBIN AND RUDMAN LLP

COUNSELLORS AT LAW

50 ROWES WHARF • BOSTON, MASSACHUSETTS 02110-3319

TELEPHONE: (617) 330-7000 • FACSIMILE: (617) 439-9556 • EMAIL: FIRM@RUBINRUDMAN.COM

Glenn A. Wood
Direct Dial: (617) 330-7016
E-mail: gwood@rubinrudman.com

January 13, 2003

Colleen M. Strapponi
One Overdale Parkway
Hopedale, MA 01747

Re: Land Court Decision

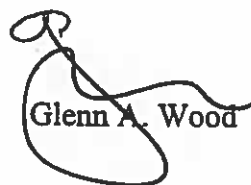
Dear Colleen:

I am pleased to inform you that we were successful in the litigation against Black Brook Realty and the Town of Hopedale in the Land Court case. I have enclosed a copy of the decision just issued by Judge Kilborn, which he determined that the Planning Board exceeded its authority in granting subdivision approval for the Black Brook project and through this decision annulled the Planning Board approval. Black Brook or the Town could appeal the decision to the Appeals Court. We will have to wait to see if it occurs.

At this time, I would like to discuss the case and its ramifications. I would also like to revisit the issue of our outstanding invoices to Fasanella and Wood. Obviously, and surely based on this decision, it is even more clear that our work on behalf of OPC was significant and in the end successful. As such, I would like to reach a prompt resolution of our outstanding invoices.

I look forward to speaking with you on these matters.

Sincerely yours,



Glenn A. Wood

Encl.

cc: Denise Lender and Douglas Moore (w/enc.)
Marjorie Clinton (w/enc.)

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

Miscellaneous Case No. 263637

KENNETT G. COLEMAN, LYNN H.
PARKER, DENISE LINDER, DOUGLAS
MOORE, COLLEEN M. STRAPPONI, MARK
S. STRAPPONI, and MARJORIE O.
CLINTON,

Plaintiffs

v.

D. CRAIG TRAVERS, HARLAND GRIFFIN,
PHILLIP LEMARBRE, JOSEPH LUCHINI,
and MICHAEL WEAVER, as they are members
of the TOWN OF HOPEDALE PLANNING
BOARD, and BLACK BROOK REALTY
CORPORATION,

Defendants

JUDGMENT

After a trial, the court has issued a decision in this action, dated today. Based on that decision, the judgment in this action is that the decision of the Hopedale Planning Board on April 5, 2000, approving the definitive subdivision plan of defendant Black Brook Realty Corporation, exceeded the authority of the board and is annulled.

pwk

By the Court (Kilborn, C.J.)
Attest:

Dated: January 8, 2003

Ann-Marie J. Breuer
Deputy Recorder

TRUE COPY
ATTEST

Ann-Marie J. Breuer
DEPUTY RECORDER

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

Miscellaneous Case 263677

KENNETT G. COLEMAN, LYNN H.
PARKER, DENISE LINDER, DOUGLAS
MOORE, COLLEEN M. STRAPPONI, MARK
S. STRAPPONI, MARJORIE O. CLINTON,
GEORGE LOVEWELL, and JOYCE
JACKSON,

Plaintiffs

v.

JAMES F. FLYNN, KATHLEEN COFFEY-
DANIELS, PETER I. DENTON, R.
CHRISOPHER NOONAN, and VINCENT
CATALDO, as they are members of the TOWN
OF MENDON PLANNING BOARD, and
BLACK BROOK REALTY CORPORATION,

Defendants

JUDGMENT

After a trial, the court has issued a decision in this action, dated today. Based on that decision, the judgment in this action is that the decision of the Mendon Planning Board on April 10, 2000, approving the definitive subdivision plan of defendant Black Brook Realty Corporation, exceeded the authority of the board and is annulled.

By the Court (Kilborn, C.J.)

Attest:

Dated: January 8, 2003

Ann-Marie J. Breuer
Deputy Recorder

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(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

KENNETT G. COLEMAN, LYNN H.
PARKER, DENISE LINDER, DOUGLAS
MOORE, COLLEEN M. STRAPPONI, MARK
S. STRAPPONI, and MARJORIE O.
CLINTON,

Plaintiffs

Miscellaneous Case No. 263637

v.

D. CRAIG TRAVERS, HARLAND GRIFFIN,
PHILLIP LEMARBRE, JOSEPH LUCHINI,
and MICHAEL WEAVER, as they are members
of the TOWN OF HOPEDALE PLANNING
BOARD, and BLACK BROOK REALTY
CORPORATION,

Defendants

KENNETT G. COLEMAN, LYNN H.
PARKER, DENISE LINDER, DOUGLAS
MOORE, COLLEEN M. STRAPPONI, MARK
S. STRAPPONI, MARJORIE O. CLINTON,
GEORGE LOVEWELL, and JOYCE
JACKSON¹,

Plaintiffs

Miscellaneous Case No. 263677²

v.

JAMES F. FLYNN, KATHLEEN COFFEY-
DANIELS, PETER I. DENTON, R.
CHRISOPHER NOONAN, and VINCENT
CATALDO, as they are members of the TOWN
OF MENDON PLANNING BOARD, and
BLACK BROOK REALTY CORPORATION,

Defendants

¹David J. and Elizabeth M. Benney were dismissed as plaintiffs from the Mendon amended complaint by stipulation, and along with them, Count VI of that complaint. (See November 24, 2000 order of this court (Green, J.) on defendants' motion to dismiss, at 3.)

²The cases were consolidated June 30, 2002 (Schefer, J.), upon motion of defendant Black Brook Realty Corporation.

DECISION

Plaintiffs appeal decisions of the Mendon and Hopedale planning boards approving a definitive subdivision plan of Black Brook Realty Corporation (Black Brook). Access to the proposed subdivision is via Overdale Parkway, a road owned in fee by the town of Hopedale, but whose legal status is uncertain. Plaintiffs' challenge is based primarily on the question of Black Brook's right to use Overdale Parkway for access, although they also attack the Hopedale board's decision for an alleged procedural defect.

Amended complaints were filed in each case May 3, 2000, and a trial was held November 13, 2001. A duly sworn stenographer transcribed the testimony of eight witnesses: plaintiffs Kennett G. Coleman and Marjorie Clinton, Carol Whyte (a Hopedale resident), Joanne Whyte (a former Hopedale park director and current Hopedale resident), John A. Farrar (a Hopedale road commissioner), Margaret Wittenborg, Esq. (Black Brook's title examiner), Edward Larkin (an abutter), and John Burns (President of Black Brook). Thirty-nine exhibits, some with multiple parts, were admitted in evidence.³ The record also contains the deposition testimony of Curville W. Cox (Black Brook's predecessor in title)(admissibility taken under advisement at trial, see T. 142, but which I now admit) and affidavits of Attorneys Wittenborg and Haney (the title examiners), admitted as exhibits 49 and 50 at trial. I took a view November 14, 2001. The parties submitted post-trial briefing January 3, 2002.

Defendants' motion to dismiss was allowed⁴ as to Count V of both complaints, which alleged invalidity for failure to consider septic systems (neither town's subdivision regulations authorized inquiry into septic systems), and Count VII of the Hopedale amended complaint, which alleged bad faith on the part of that board. The remaining allegations, therefore, are Counts I through IV of each complaint, which relate to Black Brook's use of Overdale Parkway, and Count VI of the Hopedale complaint, which alleges that members of the board who voted to approve were not present at all evenings of the public hearing. In addition, Count III attacks the physical adequacy of Overdale Parkway, and Count I, Paragraph 38 alleges that past development attempts had failed (because of similar access issues, according to plaintiffs' briefing). Plaintiffs ask that I annul each decision as in excess of authority, abuses of discretion, and noncompliant with the subdivision control law and the subdivision rules and regulations of each town. They also request their costs and fees in the Hopedale action.

I find and rule as follows.

1. The subdivision at issue (subdivision) is a 42 lot residential subdivision which straddles the town line between Mendon and Hopedale, and is depicted on a plan entitled "Old Salt Box Hill 'Definitive' Plan of Land in Mendon & Hopedale, Mass." prepared by Guerriere & Halnon, Inc., dated September 1, 1999 (definitive plan, a copy of the cover sheet of which is appended hereto

³There are 36 exhibits admitted by joint stipulation. Three exhibits proffered by plaintiffs, numbers 37, 38, and 44 were admitted. Proposed exhibits 39 through 43, and 45 through 48 were not admitted.

⁴See order dated November 24, 2000 (Green, J.).

as Exhibit A). (Exh. 52.) The Hopedale planning board approved the definitive plan April 5, 2000, and the Mendon planning board followed suit April 11, 2000. (Exh's. 2 and 3, respectively.⁵)

2. All plaintiffs live in Hopedale, along Overdale Parkway within 1,000 feet of the subdivision⁶. Plaintiffs Coleman and Parker live directly across Overdale Parkway from the subdivision, and plaintiffs Lovewell and Jackson reside diagonally across the intersection of Overdale Parkway and Old Salt Box Road. Plaintiffs list among their sources of aggrievement the predicted increase in traffic near their properties, loss of the "quiet and rural character" of the area, reduction in pedestrian safety, hindrance of emergency vehicles, diminution of property values, potential flooding damage, and the presence of attractive nuisances (stormwater detention basins). (See Mendon amended complaint (Mendon complaint) ¶¶ 18-24; Hopedale complaint, ¶¶ 19-24.)

3. Between 1899 and 1916 Hopedale took, for park purposes, over 187 acres of land near or adjacent to the subdivision. (Wittenborg Aff. ¶ 5.) In 1916, Hopedale began to acquire fifty-foot wide strips of land between Freedom Street and the boundary of the park land⁷ for a road. (deeds to town, Exh's. 29, 30, 32, & 33.) The last parcel needed for this section of road was conveyed to the town in 1945. (Exh. 31.) These parcels are shown on a plan entitled "Plan Showing Certain Lots of Land Purchased by the Town of Hopedale Situated in said Town Northerly of Freedom Street" signed by G. C. Eastman and dated October 1916. (Exh. 14, "the 1916 plan", a copy of which is appended hereto as Exhibit B.) These parcels together form Overdale Parkway, which is, thus, owned by the town of Hopedale.

4. Freedom Street in Hopedale is the sole public road which serves the subdivision. Overdale Parkway leads northwesterly from Freedom Street to the subdivision. The southerly boundary of the subdivision (lots 1 and 33) abuts Old Saltbox Road, which, in the 1800's was a

⁵These exhibits are described as "approvals" in the parties' index to exhibits. However, exhibit 2 is only a one page letter to the Hopedale town clerk and exhibit 3 is only a one page letter addressed to Black Brook (stamped by the clerk). Exhibit 1 is a copy of the cover sheet of the definitive plan and exhibits 9 and 10 are copies of various board minutes of meetings at which the subdivision was discussed and ultimately approved.

⁶This distance was obtained by scaling from the definitive plan.

⁷This boundary is the same as the boundary between the parcels shown as "Jessie M. Clark" and "Wendell Williams to Town of Hopedale" on the 1916 plan (described in paragraph 3). The course of the parcel boundaries matches the present course of Overdale Parkway and the lot lines along it, and the distances shown on the 1916 plan correspond with the distances I obtained by scaling from the definitive plan.

⁸The 1916 plan shows parcel C as having been conveyed by "Henry L. Patrick to Town of Hopedale." However, neither Attorney Wittenborg nor Attorney Haney found a record of any such conveyance, apparently; both state that the conveyance of that parcel to the town occurred in 1945, from Henry Billings. See Exh. 7 to Wittenborg Aff.; ¶ 7 of Haney Aff.

principal east-west road, but which is now mostly abandoned. The distance from Freedom Street to the subdivision at Old Saltbox Road is approximately 1150 feet. Overdale Parkway continues northwesterly about 295 feet after it passes Old Saltbox Road, and its westerly line forms part of the easterly boundary of the subdivision.⁹ Two subdivision roads lead westerly off Overdale Parkway: the first, Shattuck Lane, is about 250' from Old Saltbox Road; the second, which is either Watson Lane or is unnamed (the subdivision plan does not make it clear) is about 500' from Old Saltbox Lane. Each of these subdivision roads ends in a cul-de-sac, and the two roads are connected by a short road labelled "Watson Lane."

5. The conveyances referred to in paragraph 3 above are shown as parcels A, B, C, D, and E on the 1916 plan. Parcels C, D, and E make up the section of what is now Overdale Parkway north of Old Salt Box Road. The distances given for the northern boundaries of those three parcels total 1,100.4 feet. The length of Overdale Parkway north of Old Salt Box Road as shown on the definitive plan scales to the same distance, and the second subdivision road intersects Overdale Parkway within the parcel shown as parcel E on the 1916 plan.

6. The 1917 report of the Hopedale park commissioners contains the following:

"SPECIAL APPROPRIATION FOR NEW ROAD.

Appropriation.....	\$2,000.00
--------------------	------------

ORDERS DRAWN ON TOWN TREASURER.

Teaming.....	\$ 126.50	
Building 1800 ft. of Road.....	1,800.00	
Culverts.....	66.00	
Incidentals.....	7.50	
	<u>\$2,000.00</u>	<u>\$2,000.00</u>

[sections entitled "Playgrounds", "Feeding the Birds", and "Trees and Shrubs" omitted]

ROADS AND PATHS.

On the tract of land covering the easterly side of Darling Hill, paths and trails are in the process of construction. The roadway extending from Freedom Street to the highest point of land in town (525 ft. above sea level) is well underway, more than 1800 ft. having been

⁹The area from Freedom Street to Old Salt Box Road is shown on exhibit 6. It states the distance from Freedom Street to the end of Overdale Parkway is 1445 feet, plus or minus, and shows Overdale Parkway as ending in front of the house of plaintiffs Coleman and Parker, approximately opposite the intersection of Overdale Parkway and the subdivision street labeled Shattuck Lane.

completed. From points adjoining this road may be seen The Great Blue Hills, Dean Academy, Sharon Heights, Cumberland Hill, Peppercorn Hill, Wachusett Mountain, Wigwam and Miscoe Hills, as well as a large stretch of the surrounding country."

(Exh. 18.) Attorney Wittenborg believes that the roadway referred to in the above report is Overdale Parkway, and I agree. (Wittenborg Aff. ¶ 11; see also trial transcript (T.) at 113-115.) The name "Overdale Parkway" appears on a 1929 plan (Exh. 22) and in the 1945 deed that has the effect of conveying part of Overdale Parkway to the town. (Exh. 31; Wittenborg Aff. ¶ 11; Haney Aff. ¶ 7.)

7. In 1955, the town paved 1500 feet of Overdale Parkway. (Exh. 9.) The Hopedale highway department has records of continuing maintenance, including the installation of drain pipes, grading, and "seal[ing] with sand". (Id.) In 1997, it was "overlaid" with an oil and sand surface. (T at 97.) As early as 1963, Hopedale provided weekly rubbish removal services to residents along Overdale Parkway. (T. at 98-99.) In 1961, the acceptance of Overdale Parkway as a town way was placed on the warrant at town meeting, but was not voted on. (Exh. 37.) The Hopedale highway department records show Overdale Parkway as having been "accepted" by the town in 1961 (Exh. 19), but the trial record also contains a certification by the Hopedale town clerk that Overdale Parkway was never accepted. (Exh. 36.)¹⁰ Overdale Parkway serves two functions: it provides access to a number of houses which abut it¹¹, including plaintiffs', and access to the town park which lies beyond its end. It is paved all the way from Freedom Street to just past the last house (that of plaintiffs Coleman and Parker). Beyond the paved portion it is a dirt road, rough but passable by vehicle, which leads into the park.

8. Some of the deeds conveying the parcels that comprise Overdale Parkway reserved easements, but they were easements to pass from one side of Overdale Parkway to the other (Haney Aff., ¶¶ 4-9.) and they are of no help to Black Brook. Plaintiffs allege that an easement (leading to a road in Mendon) retained by one of Black Brook's predecessors in title precludes any claim of easement by necessity. (Haney Aff. ¶ 11.) They also allege that if Black Brook had any easement rights, use of them for the subdivision would be an overburdening. However, all these considerations are subsumed by the fact that Black Brook does not claim any easement except by prescription.

9. The town of Hopedale installed a metal gate, capable of being locked, across Overdale Parkway, according to one witness, in "the late 60's or early 70's." (T. 51; see also 75,78.) Other witnesses corroborate the presence of the gate (which has been periodically replaced) as early as 1991. (T. 78; 99.) The gate is located about 200 feet beyond the end of the paved portion of

¹⁰ Black Brook, in its briefing, concedes that Overdale Parkway has never been accepted by the town. Exhibit 38 indicates that there was a belief on the part of some that Overdale Parkway was park land. That possibility was not developed by the parties.

¹¹ These houses are shown on exhibit 6; there are twelve of them, counting two which also front on Freedom Street.

Overdale Parkway, near the boundary of lots two and three shown on the definitive plan¹². (T. 37-38; 41.) The gate, therefore, stands between the intersections of the two subdivision roads with Overdale Parkway. (Id.)

10. The public hearing on the definitive plan held by the Hopedale board was opened November 3, 1999 and continued through the evenings of November 17, 1999, December 1, 1999, December 15, 1999, January 18, 2000, and February 2, 2000, when the board voted to close the public hearing. (Exh. 9.) The board considered the subdivision again at its March 1, 2000 meeting and voted its approval at an April 5, 2000 meeting. The Hopedale planning board has five members.¹³ Member Weaver was absent on the opening night of the hearing, November 3, 1999, but present for the subsequent five evenings of the continued public hearing. (Id.) Member Griffin was absent on February 2, 2000, the last night of the public hearing, but had been present at the other five evenings¹⁴. Member LeMarbre was absent for all six nights of the public hearing, and he did not vote on the definitive plan. (Id.) Members Travers, Griffin, Luchini, and Weaver voted to approve at the April 5, 2000 meeting. (Exh. 2.) Members Griffin and Weaver were present at a site walk of the subdivision area conducted in March 2000.

11. At the November 3, 1999 meeting (missed by member Weaver) the chairman of the board reported on various written reports the board had received and the board heard from a representative of Black Brook's surveyor. The minutes (Exh. 9) also state: "Abutters raised concerns with respect to the number of lots, road access, drainage, water run off, traffic, and the concern that the unimproved portion of Overdale Parkway is an entrance to the parklands." Exhibit 9 indicates that all those concerns were discussed at one or more of the next five continuations of the public hearing. The minutes of December 15, 1999 (attended by both Mssrs. Griffin and Weaver) indicate that "[t]he residents submitted additional information." At the last session of the public hearing, February 2, 2000 (missed by member Griffin) the board heard from the town's Parks Commissioners and received two additional plans from Black Brook. The minutes then state: "Since there was no additional information to be submitted, the Board voted unanimously to end the Public Hearing for the 'Old Saltbox Hill' subdivision to allow the Board to commence deliberations on the submitted plan."

* * * * *

¹²Scaling on both the 1916 and definitive plans indicate the gate may stand at the point that shows a stone fence crossing parcel E, on land shown as "Jessie M. Clark" on the 1916 plan.

¹³ That appears, if only indirectly, from its minutes, exhibit 9, and also indirectly, from the briefing by the parties.

¹⁴Plaintiffs state in their post-trial brief (at 16) that Griffin missed two public hearing meetings. The minutes do not support this, and in the Hopedale complaint, ¶ 85, plaintiffs allege instead that he missed the February 2, 2000 public hearing meeting and the March 1, 2000 "meeting" (at which the board deliberated on the definitive plan, but which took place after the board voted to close the public hearing. (Exh. 9.)

STANDING

12. Black Brook challenged plaintiffs' standing at trial (T. at 30-33) and, in an earlier motion to dismiss, specifically disputed their standing as Hopedale residents to challenge the decision of the Mendon planning board¹⁵. Overdale Parkway is the sole access to the subdivision, and if the subdivision is built, all traffic to and from it would travel past the houses of most plaintiffs.¹⁶ I find plaintiffs have sufficient aggrievement for standing to appeal the Hopedale decision, because of the obvious increase in traffic on Overdale Parkway which would result from the subdivision. Plaintiffs are aggrieved by the Mendon approval for the same reason, since the subdivision lots in that town (which comprise the majority shown on the definitive plan) would also use Overdale Parkway as their sole means of access. I find they have standing to appeal that decision as well.

13. Black Brook disputed the propriety of plaintiffs' challenge to Black Brook's access rights in Overdale Parkway, on the theory that plaintiffs are strangers to the title in Overdale Parkway. I find this theory inapposite in the subdivision appeal context. The "stranger to title" concept tells us that when A, who lives far away from B but may have too much time on his hands, finds out that B is crossing C's land without any legal right to do so, A cannot sue to prevent B from crossing; in short, it's none of A's business. It is not entirely clear to me that plaintiffs are in A's situation to begin with: they have, or may have, rights in Overdale Parkway themselves, which could be adversely affected by Black Brook's use. However, I do not rely on that suggestion, since, G. L. c. 41, § 81BB gives plaintiffs access to the court, provided they meet usual requirements of aggrievement¹⁷ (which they do). Having shown standing to appeal the subdivision approvals, plaintiffs may attack those approvals on the ground of Black Brook's lack of rights in Overdale Parkway.

VALIDITY OF THE HOPEDALE APPROVAL VOTE

14. Four of the five members of the Hopedale board voted to approve the definitive

¹⁵(See November 24, 2000 order of this court (Green, J.) on defendants' motion to dismiss, at 2.)

¹⁶By using a side street, Webster Avenue, traffic could by-pass the house of plaintiffs Strapponi, Clinton, Moore, and Linder, but it is unlikely that would occur.

¹⁷This precise question was mentioned but left open by the Appeals Court in Hahn v. Planning Board of Stoughton, 24 Mass. App. Ct. 553, 555, fn 4 (1987). The issues faced in Hahn were whether the existence of an easement held by the town in a way crossing the subdivision invalidated the approval of a definitive plan (the court held it did not) and whether the easement had to be shown on the plan submission (the court held that, on the facts, it did not). The court added: "[i]f and when the easement is shown to exist, persons having standing to prevent obstruction of the easement will have ample opportunity to protect their rights." 24 Mass. App. Ct. 556.

plan - one vote more than the needed majority, see McElderry v. Planning Board of Nantucket, 431 Mass. 722 (2000). Two of those four each missed one night of public hearing (not the same night) out of six nights of public hearing over the course of three months. Plaintiffs argue, on the strength of Mullin v. Planning Board of Brewster, 17 Mass. App. Ct. 139, 143 (1983) that the two who missed a meeting cannot be counted in the majority, so there were only two valid votes out of five. Mullin, in the special permit context, indicates that only those members present at the public hearing could vote on the application. Mullin and the cases cited by the court there (17 Mass. App. Ct. 141, 142, McHugh v. Board of Zoning Adjustment of Boston, 336 Mass. 682 (1958) and Sesnovich v. Board of Appeal of Boston, 313 Mass. 694 (1943)) dealt with a voting member or members who missed the only session of the required public hearing. Counsel have cited no case law dealing directly with our situation. I conclude that, at least on the facts of this case, plaintiffs' position is too draconian; the vote was not invalidated because of the respective absences of Messrs. Weaver and Griffin. Over the course of the six meetings constituting the public hearing, both Weaver and Griffin heard the concerns raised by persons objecting to the subdivision. In particular, at the February 2 meeting the members of the public appear not to have made any substantive comments (to be missed by member Griffin). Public comment missed by one member at the first hearing and the other at the last hearing (if there was any such comment) was likely reiterated to the benefit of each at the other five hearings, or brought up in deliberation by the board. Thus, the absences would not prejudice either member's ability to decide the matter impartially before casting his vote.

ACCESS

15. Plaintiffs allege that prior attempts to develop land contained in the subdivision failed, primarily because of the same access problems alleged to exist here. The determinations of prior planning boards are not relevant: this case is a trial *de novo*, see Batchelder v. Planning Board of Yarmouth, 31 Mass. App. Ct. 104, 106 (1991), *further appellate review denied*, 411 Mass. 1101 (1991), and concerns only the facts relating to the definitive plan appealed here.

A. Physical Adequacy.

16. Plaintiffs have argued, without noticeable conviction, that Overdale Parkway, being a narrow, unpaved road along part of its length (essentially the part north of its intersection with Shattuck Lane) is inadequate physically. Black Brook responds that one of the conditions of the Hopedale approval is that it pave the unpaved section (see Black Brook's post-trial brief at 3). No evidence of that is before me¹⁸, but plaintiffs do not claim that the planning boards failed to consider physical adequacy of access. Further, they do not point to any subdivision rule or regulation relating to the condition of an access road outside the subdivision. Plaintiffs do not succeed in this argument.

B. Legal Access

¹⁸But see minutes, Exh. 9, which may contain some evidence of a commitment to pave the unpaved portion.

17. Plaintiffs' substantial contention is that Black Brook does not have legal rights in Overdale Parkway and that therefore both boards should have turned down the definitive plan. Black Brook maintains that access rights are not mentioned in the rules and regulations of either board and that, therefore, they were beyond the proper scope of planning board review¹⁹. See Castle Estates, Inc. vs. Park and Planning Board of Medfield, 344 Mass. 329, 334 (1962).

18. The rules and regulations of the Hopedale and Mendon Planning Boards are exhibits 7 and 8, respectively. Neither has an express requirement that the applicant have legal rights in any private way providing access to the subdivision. Both define "applicant" as "owner" or as including "owner" and define "owner" as "[a]s applied to real estate, the person holding the ultimate fee simple title to a parcel, tract or lot of land, as shown by the record in the appropriate Land Registration Office, Registry of Deeds or Registry of Probate." Each requires an application for approval of a definitive plan to be on a prescribed form. The form for each town identifies the signatory as "being the applicant as defined under Chapter 41, Section 81-L". Each requires that the applicant identify the record title information for his or her title.²⁰ In addition, the Hopedale application asks "The undersigned's interest in said land is as follows [leaving a blank for a fill-in]." It also asks "Access will be from the following streets [leaving a blank]." The Hopedale rules and Regulations also include, at IVB3: "Signed copies of easements and agreements effecting (sic) land not within subdivision but necessary for provision of utilities, shall be submitted to the Board before approval of plan."

19. The threshold question, then, is whether in these circumstances access rights were a proper subject for either board; if not, neither decision is open to challenge on the question of those rights. Counsel have cited no appellate case on point and I know of none. There are two relevant trial court cases, however: Lundquist v. Grandstaff, 9 LCR 149 (2001)(Misc. Case No. 251468) and DiTullio v. Streeter, 9 LCR 179 (2001)(Misc. Case No. 249971). In both those cases planning board approvals of definitive plans were annulled because the developer did not have the right to use private ways leading to the subdivision. Neither decision states whether the applicable regulations dealt with such access rights; my assumption is that neither judge would have relied on such a provision without mentioning it. There is another case in this court, Grant v. Spring, 9 LCR 84 (2001) (Misc. Case No. 221235), in which there is, without discussion, a conclusion that, since the developer did not have legal rights to a private way providing access, a definitive plan approval had to be annulled. In Lundquist, Judge Green cited, but declined to follow, a Worcester Superior Court case, Capone v. Finnerty, Civil Action no 96-2419B, which apparently reached the conclusion that the planning board there did not, or could not, consider the access rights question. Finally, in Merganser Realty Trust v. Ferragamo, 2 LCR 133(1994)(Misc. Case No. 134726) one of a board's reasons for disapproval of a definitive plan was the failure of the applicant to demonstrate its rights in a private way providing emergency access. I upheld the board as to that ground, and did so in the absence of any provision relating to ways outside the subdivision.

¹⁹ See memorandum in support of Hopedale motion to dismiss at 3; memorandum in support of Mendon motion to dismiss at 5.

²⁰ There is no provision, other than those, requiring a applicant to be an owner.

20. There are appellate cases of interest. One group deals with the cognate problem of the ownership of the subdivision land. In Batchelder, 31 Mass. App. Ct. at 108, the court held that one did not qualify as a "record owner" of subdivision land merely by having filed a petition to register the land on the basis of adverse possession. In so doing the court stated "[i]t is settled that a planning board regulation requiring the applicant for definitive plan approval to be an 'owner of record' is a reasonable regulation", citing Kuklinska v. Planning Board of Wakefield, 357 Mass. 123, 129 (1970).²¹ The court also concluded that, for public policy reasons, a board could not waive such a regulation. At fn. 5, 31 Mass. App. Ct. 107, the court described the contents of the board's regulations as to ownership, which are nearly identical to those set forth above from the Hopedale and Mendon rules and regulations. Silva v. Planning Board of Somerset, 34 Mass. App. Ct. 339 (1993) involved ownership of a street, but the street was in the subdivision, not outside, as is the case here; in the case the court mooted the question whether the board could waive the ownership requirement.

21. Other cases relate to whether a board may inquire as to the physical adequacy of ways outside a subdivision. The starting point is North Landers Corp. v. Planning Board of Falmouth, 382 Mass. 432 (1981), in which the court upheld the concept of plan disapproval based on the inadequacy of the public way serving the subdivision, where the board's rules and regulations had an express provision authorizing the board to make such an inquiry. There are three cases in this court which take the next step and hold that, absent such a provision in the rules, the board may not disapprove a plan based on the inadequacy of a road outside the subdivision: Merganser, DeSanctis v. Planning Board of Saugus, 2 LCR 12 (1994)(Misc. Case No. 164086); and Dovetail Homes, Inc. v. Planning Board of Boylston, 10 LCR 157 (2002) (Misc. Case No. 275652).

22. The rules and regulations of neither board have an express requirement that the applicant must have rights in Overdale Parkway. Is that fact fatal, under the reasoning of Castle Estates, Inc. v. Park & Planning Board of Medfield, 344 Mass. 329, 334 (1962)? Beale v. Planning Board of Rockland, 423 Mass. 690, 694-697 (1996) holds that, as to zoning compliance, there need not be an express requirement; the court there relied heavily on the general purposes clause of G. L. c. 41, § 81M. Beale is, in effect, an exception to Castle Estates. I conclude, in agreement with the cases cited in paragraph 19 above, that this case is another. There is an express requirement in both towns that Black Brook (as "applicant") must be the owner of the subdivision. There is no surprise in the suggestion that the same applies to rights in Overdale Parkway.

23. The rules of both boards quote G. L. c. 41, § 81M, which in part provides:

"The powers of a planning board and of a board of appeal under the

²¹Kuklinska involved a property dispute between neighbors. One of the disputants included the disputed land in a subdivision for which he obtained definitive plan approval, and the neighbor appealed that, on the basis the subdivider did not own all the land in the subdivision. Most of the decision deals with the title question, ending with a finding that the subdivider did not have title. The court, citing the board's express requirement that the applicant must be the owner of all the land in the subdivision, annulled the approval.

subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways;... and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions." (Emphasis added).

24. As quoted in Beale, Castle Estates states that owners are entitled to "know in advance what is or may be required of them." Beale, supra at 697. It is ingenuous for an applicant to suggest that he or she does not know in advance that he or she must have rights to use the roads necessary for access to the subdivision. There is no need to "provide specificity and substance" to such a requirement (Beale, supra at 696.)²²

25. The Hopedale board should have considered the question of Black Brook's rights in Overdale Parkway. It appears the board was aware of the issue.²³ What are Black Brook's rights? Black Brook concedes that Overdale Parkway has not been accepted by the Town of Hopedale (post trial brief, pages 1, 4, 5 and 17). It argues that "Overdale Parkway has attained "public way" status by prescription."

26. Fenn v. Middleborough, 7 Mass. App. Ct. 80, 83-84 (1979) has been cited by the parties as governing the creation of "public ways." The pertinent part of that decision is set forth here:

"In general, it may be said that an existing way in a city or town in this Commonwealth is not a 'public' way - that is, one which a city or town has a duty to maintain free from defects (see G. L. c. 84, §§ 1, 15, 22; First National Bank v. Woburn, 192 Mass. 220, 222-223 [1906]) - unless it has become public in character in one of three ways: (1) a laying out by public authority in the manner prescribed by statute (see G. L. c. 82, §§ 1-32); (2) prescription; and (3) prior to 1846, a dedication by the owner to public use, permanent and unequivocal (see Longley v. Worcester, 304 Mass. at 587-589; Uliasz v. Gillette, 357 Mass. at 104), coupled with an express or implied acceptance by the public. Because the 1846 statute put an end to the creation thereafter of public ways by dedication and acceptance (Loriol v. Keene, 343 Mass. 358, 361 [1961]), it has only been possible since that time to create a public way by a laying out in the statutory manner or by prescription."

²²The rule that subdivision regulations must give an applicant notice of physical adequacy requirements for those same roads is a different matter. A subdivider needs to know what he or she is to provide - must he or she, for instance, bring existing access roads up to the standards for roads within the subdivision?

²³ See exhibit 9, minutes of November 17, 1999 meeting: "6. Issues still requiring resolution with respect to Old Saltbox Hill: access along the existing unpaved portion of Overdale Parkway. This is a legal issue and will not be determined by the Board."

27. Prescription is Black Brook's only hope of establishing Overdale Parkway as a public way. Overdale Parkway is owned by the town. It is used for access to the houses abutting it and to the town park. The town maintains Overdale Parkway along its paved portion, that is, from Freedom Street to the Coleman/Parker lot. It may well be that Overdale Parkway has become public over its paved portion, although the matter is not completely clear. The predominant use of Overdale Parkway appears to have been by persons owning the lots which abut it, or their invitees. That may not be enough to establish rights in anyone else. The town's maintenance of the paved portion suggests the town views the paved portion as open to anyone. However, that may simply be a reflection of the fact that the town views Overdale Parkway as access to the park land. Also, prescription is a puzzling concept in this context, since the town, as owner, has been content to have Overdale Parkway used, rendering questionable whether use has been adverse and not permissive. Finally, there is a question whether Overdale Parkway is held by the town in a manner or capacity such that prescriptive rights could be obtained over it.

28. I do not have to reach a hard conclusion as to the public way status of the paved portion of Overdale Parkway, however. Whatever the status of the paved portion, I conclude the unpaved portion is not public. If, indeed, anyone has prescriptive rights in the unpaved portion, those rights would be limited to use for access to the park. Black Brook needs rights in the entire length of Overdale Parkway and, as stated, its best case is that Overdale Parkway is a public way, and that, as stated, is true only as to the unpaved portion.

29. Because of Black Brook's lack of a legal right to use Overdale Parkway over its entire length, the decisions of both boards were beyond their authority and are annulled.

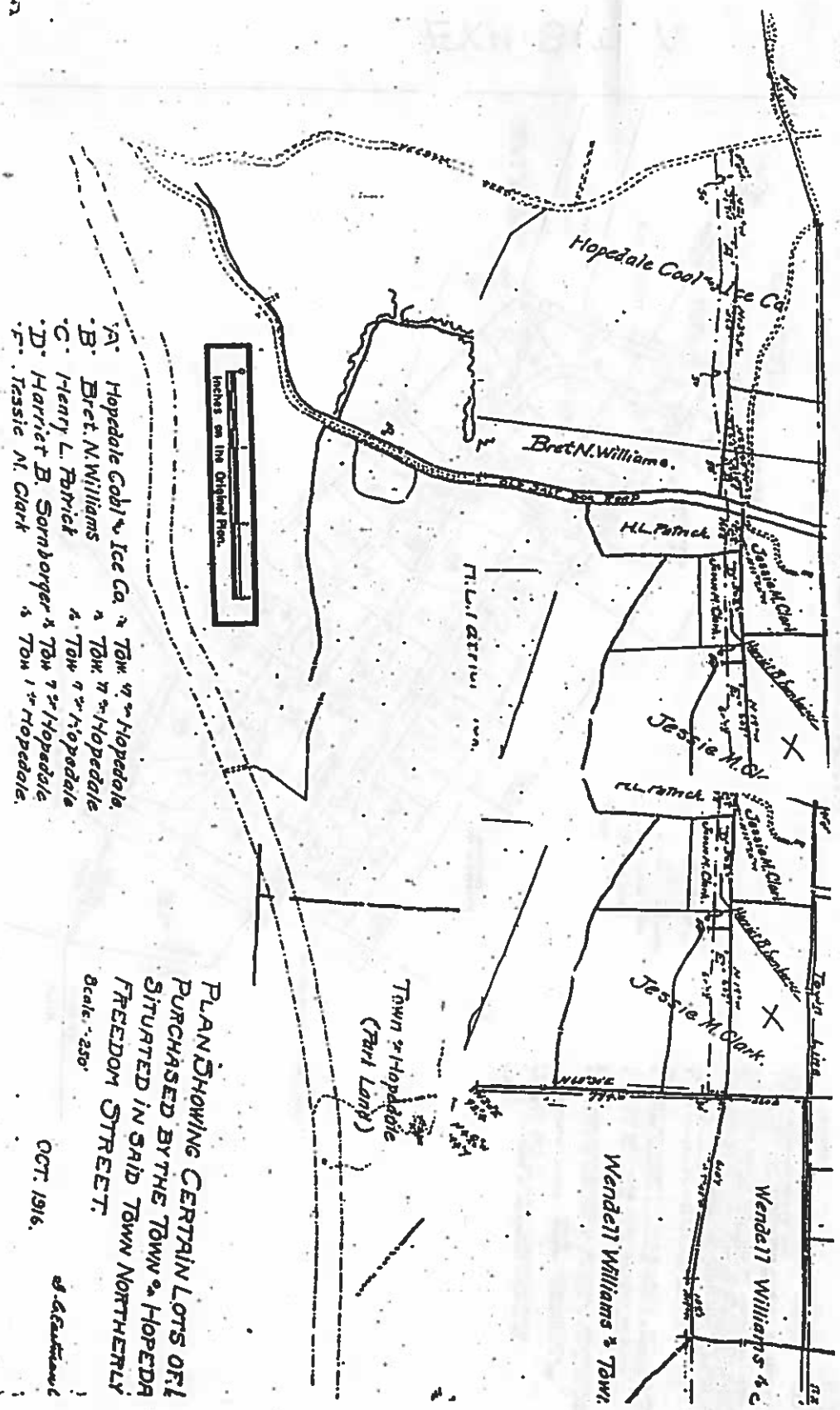
Judgment in both cases accordingly.

Peter W. Kilborn

Peter W. Kilborn
Chief Justice

Dated: January 8, 2003

- 0-6601



PLAN SHOWING CERTAIN LOTS OF LAND
PURCHASED BY THE TOWN OF HOPEDALE
SITUATED IN SAID TOWN NORTHERLY
FREEDOM STREET.

Scale - 1/250'

OCT. 1916.

J. A. Gault



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

February 12, 2021

Robyn York
Library Director
Bancroft Memorial Library
50 Hopedale Street
Hopedale, MA 01747

RE: Bancroft Memorial Library, Hopedale, MA, (Contractor Concurrence), MPPF #4244

Dear Ms. York:

MHC has received the contractor bid tabulations and architect recommendation for your MPPF project and concurs that Almar LLC of Medfield, MA is the lowest responsible and eligible bidder. Please submit a copy of the written notice awarding the contract and the executed contract between the Town of Hopedale and Almar LLC as part of your procurement documentation package as soon as it is available.

Please refer to *Section V. PROCUREMENT PROCEDURES, Procurement Documentation* within the LPC Manual for a list of the remaining items that need to be submitted (p. 17) and the Procurement Requirements checklist (p. 19) that should be used as a cover sheet to the documentation package. If you have any questions, please do not hesitate to call me at (617)727-8470.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ross W. Dekle".

Ross W. Dekle
Preservation Planner
Massachusetts Historical Commission

xc: Diana Schindler - Town Administrator
Douglas Manley, AIA, LEED, AP - Spencer, Sullivan & Vogt

(/projects.php?id=4820)

id=4820)








General Bid

General Bid Date: Thursday, January 28, 2021 02:00 PM

GENERAL BID STATUS

Pending Review

☐ Alt 1

Bid #	Result	Bidder	Base Bid	Alternates	Final Bid	View Bids	Manage Bids
15891	#1	m.d.m. engineering company, inc. 51 sawmill road dudley, MA 01571	\$188,000.00	1: \$2,000.00	\$188,000.00	 (../upload/855/generalBid_4820.pdf)	<input type="button" value="Mark low"/>
15862	#2	Almar LLC PO Box 662 Medfield, MA 02052	\$218,490.00	1: \$1,500.00	\$218,490.00	 (../upload/1011/generalBid_4820.pdf)	<input type="button" value="Mark low"/>
15916	#3	Greenwood Industries, Inc. 640 Lincoln St Worcester, MA 01605	\$243,000.00	1: \$9,900.00	\$243,000.00	 (../upload/130/generalBid_4820.pdf)	<input type="button" value="Mark low"/>
15903	#4	Titan Roofing, Inc. 200 Tapley Street Springfield, MA 01104	\$246,033.00	1: \$2,500.00	\$246,033.00	 (../upload/115/generalBid_4820.pdf)	<input type="button" value="Mark low"/>
15904	#5	Crocker Architectural Sheet Metal Co., Inc. 129 Southbridge Rd North Oxford, MA 01537	\$256,500.00	1: \$9,800.00	\$256,500.00	 (../upload/719/generalBid_4820.pdf)	<input type="button" value="Mark low"/>
15907	#6	The Aulson Company, LLC 49 Danton Drive, Suite 201 Methuen, MA 01844	\$276,876.00	1: \$2,125.00	\$276,876.00	 (../upload/762/generalBid_4820.pdf)	<input type="button" value="Mark low"/>
15908	#7	Gilbert & Becker Co., Inc. 16-24 Clapp Street Dorchester, MA 02125	\$299,000.00	1: \$6,500.00	\$299,000.00	 (../upload/1466/generalBid_4820.pdf)	<input type="button" value="Mark low"/>

Print all General Bids ()

[Print all General Bids \(\)](#)

You may invite someone to review the bids you received. Enter their names and email addresses here, than click "Save" to confirm. They will be able to view the bids, but cannot modify them.

Reviewer Name	email Address		
<input type="text"/>	<input type="text" value="dmanley@ssvarchitects.com"/>	Send Link Now	Remove
<input type="text"/>	<input type="text" value="lspencer@ssvarchitects.com"/>	Send Link Now	Remove
<input type="text"/>	<input type="text" value="jmetrano@ssvarchitects.com"/>	Send Link Now	Remove

[Add](#) [Save](#)

BidDocs ONLINE, Inc.
P.O. Box 51
Groton, MA 01450

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[Terms & Conditions \(/terms.php\)](#) [Tutorials \(/tutorials.php\)](#)

[Contact Us \(/contact_us.php\)](#)

TOWN OF HOPEDALE

CONTRACT

DATE: _____

This Contract is entered into on this date, by and between the **TOWN OF HOPEDALE**, a duly organized and existing municipal corporation in the Commonwealth of Massachusetts, by its officials, officers and agents, with no personal liability, with its principal government offices located at 78 Hopedale Street, Hopedale, Massachusetts 01747 (the "Town"), and

_____, a duly organized and existing **business corporation or limited liability company**, in good standing, with regulatory agencies of the Commonwealth of Massachusetts, with business offices located at _____, **TELEPHONE #:** _____, **FAX #:** _____, **AND E-MAIL ADDRESS:** _____ ("Contractor").

1. **Description.** This is a Contract for the procurement of the following:

2. **Price.** The Contract Price to be paid to the Contractor by the Town is: \$ _____

3. **Payment.** To be made as follows:

3.1 As invoiced, thirty (30) days net.

3.2 Fees and approved reimbursable costs combined shall not exceed \$ _____ as more fully set forth in the Contractor's response to the _____

3.3 There shall be no further costs, fees or reimbursable charges due to the Contractor under this Contract unless said fees and/or costs are set forth in writing in an Amendment hereto expressly agreed upon by the parties. The Town will not pay any surcharge or premium in addition to the verified direct out of pocket expenses, if any.

3.4 Final payment including any unpaid balance of the Contractor's compensation shall be due and payable when the PROJECT/GOODS/SERVICES is/are delivered to the Town, when the project is completed and the services are completed and/or the goods are delivered and accepted.

4. **Definitions.**

4.1 *Acceptance:* All contracts require proper acceptance of the described goods or services by the Town. Proper acceptable shall be understood to include inspection of goods to verify fitness for the purpose intended and certification of acceptable performance for

services, in writing, by authorized representatives of the Town to ensure that the goods or services are complete and are as specified in the Contract.

4.2 *Contract Documents:* All documents relative to the Contract including (where used) Request for Proposal (RFP) and all attachments thereto, Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, drawings, all addenda issued during the bidding period, insurance certificates and Contractor's response to the RFP. The Contract Documents are complementary and are integrated, and what is called for by any one shall be as binding as if called for by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

4.3 *Contractor:* The "other party" to any contract with the Town. This term shall (as the sense and particular contract so require) include Vendor, Contractors, Engineer, or other label used to identify the other party in the particular contract. Use of the term "Contractor" shall be understood to refer to any other such label when used, whether business corporation, limited liability company, partnership or sole proprietorship.

4.4 *Date of Substantial Performance:* The date when the Town determines the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract Documents, as modified by approved amendment(s) and change orders.

4.5 *Goods:* Equipment, commodities, supplies, services or materials.

4.6 *Subcontractor:* Those having a direct contract with the Contractor. The term includes one who furnished material worked to a special design according to the drawings or specifications of this work, but does not include one who merely furnished material not so worked.

4.7 *Work:* The services to be performed or materials contracted to be furnished, or both.

5. Term of Contract and Time for Performance.

This contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before _____, unless expressly extended, in writing, at the sole discretion of the Town, and not subject to assent by the Contractor, and if extended by the Town, solely in its discretion, only for good cause shown, and further subject to the availability and appropriation of public funds as certified by the Town Accountant. Time is of the essence for the completion of the Contract.

6. Subject to Appropriation.

Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for damages, penalties or other charges to the Town. In the event

this is a multi-year contract, and not for a basic recurring service, this Contract shall be subject to annual appropriation and in the event funds are not so appropriated, this Contract shall terminate immediately without liability for damages, penalties, charges or costs to the Town.

7. Permits and Approvals.

All Permits, licenses, approvals and all other legal or administrative prerequisites and conditions prerequisites to its performance of the Contract shall be timely secured and paid for by the Contractor.

8. Termination and Default.

8.1. *Without Cause.* The Town may terminate this Contract on seven (7) calendar days notice, without cause, and for public convenience when, in the Town's sole discretion, it determines it is in the best public interests of the Town to do so, by providing notice to the Contractor, in writing, and shall be deemed delivered and received when given, in person, to the Contractor, or when received by e-mail, fax, express mail, certified mail with return receipt requested, first class mail with postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination if performed in good faith.

8.2. *For Cause.* If the Contractor is determined by the Town to be in default of any provision, term condition or requirement of this Contract, then the Town may terminate said Contract upon seven (7) calendar days written notice and shall be deemed delivered and received when given in person to the Contractor at its place of business specified on Page 1 hereof, or when received by e-mail, fax, express mail, certified mail, with return receipt requested, first class mail, with postage prepaid, or delivered by any other appropriate method evidencing actual receipt by the Contractor.

8.3. *Default.* The following shall constitute events of a default under the Contract.

- a.** Any material misrepresentation made by the Contractor to the Town;
- b.** Any failure to perform any of its obligations under this Contract including but not limited to:
 - (i)** failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's control;
 - (ii)** failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's control;
 - (iii)** failure to perform this Contract in a manner satisfactory to the Town;

(iv) failure to promptly re-perform within a reasonable time as determined by the Town, in its sole discretion, the services that were rejected by the Town as unsatisfactory or erroneous;

(v) discontinuance of the services for reasons not beyond the Contractor's control;

(vi) failure to comply with a material term of this Contract including, but not limited to, the provision of adequate insurance and non-discrimination;

(vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract; and

(viii) failure to fully comply with any and all requirements of Federal or State law and/or regulations, Town bylaw and/or regulations.

9. Suspension of Delay.

The Town may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the services, without cause, for such period of time as the Town may determine to be appropriate for its public convenience. In the event of any such suspension, delay or interruption, the Contractor's compensation shall be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the services, or if another provision of this Contract is applied to render an equitable adjustment.

10. No Damages for Delay.

Notwithstanding any contained in Section 9 to the contrary, if the Contractor is delayed, at any time, in performing or furnishing the Work by any act or neglect of the Town or its consultants, including, without limiting the generality of the foregoing, delay caused by failure of the site being available for work or ready to accept the Contractor's work or the failure of the owner or its consultants to furnish any work, materials, information, documentation, or decisions, the Contractor shall have no claim to any damages, costs, or expenses of any kind or nature, for any suspension, delay, interruption, hindrance, or acceleration of its work. Furthermore, to the extent Contractor is delayed, it shall be entitled to an extension of time to its period of contract performance upon authorization by the Town and the Contractor will have no claim for damages, cause, or expenses of any kind or nature, for any suspension, delay, interruption, or acceleration of its work in the event that the Town grants such an extension of time to the Contractor's performance.

11. Contractor's Breach and Town's Remedies.

Failure of the Contractor to comply with any of the provisions, terms, conditions or requirements of this Contract shall be deemed a material breach of this Contract, and the Town shall have all the rights and remedies provided in the Contract Documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and

all actions at law or in equity or other proceedings with respect to a breach of this Contract, including “damages” which are not limited to costs, attorney’s fees or other damages resulting from said breach as well as specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount as a set-off for expenses, losses and damages incurred by the Town as a consequence of procuring other services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

12. Liquidated Damages.

If Contractor shall neglect, fail, or refuse to complete the work within the time specified or any proper extension thereof granted by the Town, then the Contractor agrees, as part consideration for the awarding of this Contract, to pay the sum of Two-Hundred Fifty (\$250.00) Dollars, per day, to the Town, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. The amount is fixed and agreed upon by and between the Town and the Contractor to be a reasonable approximation of the amount of damages which the Town would sustain, because of the impracticability and difficulty of fixing and ascertaining the actual damages the Town would, in such event, sustain.

13. Statutory Compliance.

13.1. This Contract will be strictly construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract Documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of the Massachusetts General Laws are incorporated by reference into this Contract, including but not limited to the following:

- a. M.G.L. Chapter 30B, Procurement of Goods and Services;
- b. M.G.L. Chapter 30, Section 39, et seq., Public Works Contracts; and
- c. M.G.L. Chapter 149, Section 44A, et seq., Public Buildings Contracts.

13.2. Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

13.3. The Contractor shall comply with all federal, state and local laws, rules, regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits and approvals required for the performance of such Work.

The Contractor shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of the Contractor to comply with Subsection 13.3. If any discrepancy or inconsistency is discovered in the drawings, specifications or Contract for this work in violation of any such law, bylaw, regulation, order or decree, it shall forthwith report the same, in writing, to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, bylaws, regulations, orders and decrees; and shall protect and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors or any such law, bylaw, regulation or decree.

14. Mediation.

Within ten (10) calendar days of the date that the Town has received written notice of a dispute regarding a contract item, the Town may require that the Contractor enter into a good faith effort to resolve the dispute through mediation. The equitable distribution of the costs of such mediation to the parties hereto shall be determined as part of the mediation process.

15. Conflict of Interest.

Both the Town and the Contractor acknowledge the provisions of the *State Conflict of Interest Law* pursuant to M.G.L. c.268A, and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c.268A to the performance of this Contract; and by executing the Contract documents, the Contractor certifies, to the Town, that neither it nor its officers, agents, employees, or its subcontractors are thereby in violation of M.G.L. c.268A.

16. Certification of Tax Compliance.

This Contract must include a certification of tax compliance by the Contractor, as required by M.G.L. c.62C, Section 49A. This is a requirement of tax compliance by all contractors providing goods, services or real estate space to the Commonwealth or subdivision.

17. Non-Discrimination.

The Contractor shall carry out the obligations of this Agreement in compliance with all requirements imposed by or pursuant to federal, state and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment, including by not limited to (a) *Title VII of the Civil Rights Act of 1964*; (b) *Age Discrimination in Employment Act of 1967*; (c) *Section 504 of the Rehabilitation Act of 1973*; (d) M.G.L. c.151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the Commonwealth of Massachusetts and the Town as they may be amended from time to time. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation.

18. Assignment.

The Contractor shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the Town, and shall not assign any of the monies payable under this Contract, except by and with the written consent of the Town.

19. Condition of Enforceability against the Town.

This Contract is only binding upon and enforceable against the Town, pursuant to the following:

- a. the Contract is signed by the Board of Selectmen or its duly authorized designee;
- b. endorsed with approval by the Town Accountant as to appropriation or availability of funds; and
- c. endorsed with approval by Town Counsel as to legal form.

20. Corporate Contractor.

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Hopedale unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the Massachusetts General Laws, Chapter 181, Sections 3 and 5 and all other applicable provisions thereof, and any Acts and Amendments relative thereto, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

21. Contractor's Personnel.

The Contractor shall utilize only its qualified employees and shall not utilize any third-party contractors without prior written approval of the Town.

22. Liability of Public Officials.

To the full extent permitted by law, no official, employee, agent or representative of the Town of Hopedale shall be individually or personally liable on any obligation of the Town under this Contract.

23. Indemnification:

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and save harmless the Town, the architect/engineer and all of the Town and architect/engineer's officers, agents and employees from and against all suits and claims of liability of every name and nature, including attorney's fees and costs of defending any action or claim, for or on account of any claim, loss, liability or injuries to persons or damage to property of the Town or any person, firm, corporation or association arising out of or resulting from any act, omission, or negligence of the Contractor, subcontractors and its and their agents or employees in the performance of this work covered by this Agreement. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

- 23.1** The Contractor further agrees to indemnify and hold harmless the Town, including the agents, employees and representatives from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- 23.2** The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.
- 23.3** In any and all claims against the town or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's Compensation Acts, disability benefit acts or other employee benefit acts.
- 23.4** The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from or arising in whole or in part out of any act, omission, or negligence on the part of the Contractor or of any Subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.

The foregoing provisions shall not be deemed to be released, waived, limited or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

24. Insurance.

24.1 *Workers Compensation Insurance.* The Contractor shall provide insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

This shall include umbrella liability of \$2,000,000.00 per occurrence, \$2,000,000.00 aggregate which shall include the Town of Hopedale named as an additional insured with the policy so endorsed.

Failure to provide and continue in force such insurance, during the period of this Contract, shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Section.

The Contractor shall furnish to the Town a certificate evidencing of such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, unless expressly waived by the Town.

24.2 Other Insurance requirements are as follows:

- a. Comprehensive commercial general liability insurance with limits of at least One (\$1,000,000) Million Dollars per occurrence and Three (\$3,000,000) Million Dollars annual aggregate for property damage and One (\$1,000,000) Million Dollars per person and Three (\$3,000,000) Million Dollars per occurrence for bodily injury, with the *Town of Hopedale named as an additional insured with the policy so endorsed*, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor's employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.
- b. Motor Vehicle Insurance for any motor vehicles used in performing the Work, with limits of at least \$1,000,000 per person, and \$1,000,000 per accident.
- c. The intent of the specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages,

losses and expenses resulting from exposure to any casualty liability in the performance of the work.

- d. All policies shall identify the Town *as an additional insured with the policy so endorsed, with a Certificate of Insurance issued and a copy of the Insurance Policy furnished before the execution of this Contract* (except Workers' Compensation) and shall provide that the Town shall receive written notification at least thirty (30) days prior to the effective date of any amendment or cancellation. Renewal Certificates shall be filed with the Town at least ten (10) days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town upon the execution of this Contract, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. Failure to provide or to continue in force, such insurance shall be deemed a material breach of this Contract and shall be grounds for immediate termination. Insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverage's shall be maintained, without interruption, from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.
- e. The Contractor shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts, in good standing, and acceptable to the Town.

25. Documents and Supporting Materials.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior express written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66 of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the Town, in the United States or any other country. The Town shall have unrestricted authority to, without payment of any royalty, commission, or additional

fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town with full proprietary interest at the termination of this Contract. The Contractor shall at all times, during or after termination of this Contract, obtain the prior express written approval of the Town before making any statement bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium

Any plans, sketches, drawings, renderings and specifications created to conform to the requirements of this Contract shall be compliant with all federal, state and local laws and rules, regulations for ADA compliance and accessibility.

26. No employment.

The Contractor acknowledges and agrees that it is acting as an independent contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its officers, employees, agents, servants nor any person for whose conduct the Contractor is responsible shall be considered an employee or agent of the Town for any purpose and shall not file any claim or bring any action for any worker's compensation unemployment benefits and compensation for which they may otherwise be eligible as a Town employee as a result of work performed pursuant to the terms of this Contract.

27. Audit, Inspection and Record Keeping.

Any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination and/or to make excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

28. Payment.

The Town agrees to make all reasonable efforts to pay the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from the Town of the work completed.

29. Waiver and Amendment.

Amendments or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by express, written amendment executed by all signatories to the original Contract, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written Agreement by both parties.

Forbearance or indulgence, in any form or manner, by a party shall not be construed as a waiver or in any manner, limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

30. Severability.

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

31. Forum and Choice of Law.

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the Federal Courts presiding in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

32. Notices.

Any notice permitted or required under the provisions of this Contract, to be given or served by either of the parties hereto upon the other party shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed.

Notice to the Contractor shall be deemed sufficient if sent to the explicit corporate address:

Notice the Town shall be deemed sufficient if sent to the following government offices:

Town Administrator
Town of Hopedale
78 Hopedale Street
Hopedale, Massachusetts 01747

33. Binding on Successors.

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither the Town nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.

34. Entire Agreement.

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

35. Supplemental Conditions.

The foregoing provisions apply to all contracts to which the Town of Hopedale shall be a party. One of the following supplements must be “checked” as applicable to this Contract and submitted as an attachment. It shall, in any event, apply as the nature of the Contract requires.

The Supplement contains additional terms governing the Contract which are incorporated herein by reference:

<input type="checkbox"/>	Goods	<i>Supplement “G”</i> – Applicable to contracts for the procurement of goods (governed by the provisions of M.G.L. c.30B).
<input type="checkbox"/>	Services	<i>Supplement “S”</i> – Applicable to contracts for the procurement of services (governed by the provisions of M.G.L. c.30B).
<input checked="" type="checkbox"/>	Construction	<i>Supplement “C”</i> – Applicable to all contracts for construction (governed by the provisions of M.G.L. c.30, Sec. 39M and M.G.L. c.149).

(Space intentionally left blank. Signatories are found on the next page.)

SUPPLEMENT “C” – CONSTRUCTION

Applicable to contracts for the construction of (1) *public buildings* and *public works* governed by the provisions of M.G.L. c.30B; (2) *public buildings* governed by the provisions of M.G.L. c.149, Section 44A, *et seq.*; and (3) *public works* governed by the provisions of M.G.L. c.30, Section 39M, *et seq.*

1. This form supplements the Town of Hopedale Contract with _____ and applies only to contracts for the construction, reconstruction, alteration, remodeling or repair of *public works* or *public buildings*.
2. Wherever the law requires one contracting with a city or town to be bonded, such obligation shall be understood to be a term and condition of this Contract. The Contractor agrees to secure such bond (where required) in the form required by the Town and provide an original thereof, to the Town, prior to the commencement of performance.
3. **Equality.**
 - 3.1. In the case of a closed Specification written for a specific item or items to be furnished under the Base Bid, such specifications shall, as applicable, be in compliance with the Massachusetts General Laws, Chapter 30, Section 39M and Chapter 149, Section 44A *et seq.*
 - 3.2. Where the name of an item, material or manufacturer is mentioned in the Specifications or on the Drawings, except as aforementioned, the intent is to establish a standard and in no way should be construed to exclude any item or manufacturer not mentioned by name, but whose product meets the Specifications as to *design*, *utility* and *quality*. Final decision shall rest solely with the Town’s Project Representative (herein “Project Representative”) as to its acceptability.
4. **Change Orders.**
 - 4.1. Change orders must receive the approval of the Town’s Board of Selectmen or the Town Administrator as the Board’s designee and the appropriate Department or Division Head and must be supported and recommended by the project engineers and/or architects, if any.
 - 4.2. Written notice stating the general nature of each Change Order shall be delivered by the Contractor to the Town or its consultant promptly (but in no event later than thirty (30) days) after the start of the event giving rise thereto. The responsibility to substantiate a Change Order shall rest with the Contractor making said change. Notice of the amount or extent of the Change Order, with supporting data, shall be delivered to the Town or its consultant within sixty (60) days after the start of such event (unless the Town or its consultants allows additional time for Contractor to submit additional or more accurate data in support of such Change Order). A Change Order for an adjustment in Contract Price shall be prepared in accordance with the provisions of this Contract, a Change Order for an adjustment in contract

time shall be prepared in accordance with the provisions of this Contract. Each Change Order shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event. The Town shall submit any response to the Engineer and the Contractor within thirty (30) days after receipt of the Contractor's last submittal (unless Engineer allows additional time).

- 4.3.** Change orders to contracts governed by Massachusetts General Laws, Chapter 30B may not increase the quantity of goods or services provided by more than twenty-five (25%) per cent, in compliance with M.G.L. c.30B, Sec. 13.
- 5.** Within thirty (30) calendar days of the date that the Town has received written notice of a dispute regarding a contract item, term or condition, the Town may require that the Contractor enter into a good faith effort to resolve the dispute through mediation prior to either commencing litigation. The equitable distribution of the costs of such mediation to the parties hereto shall be determined as part of the mediation process.
- 6.** The Contractor will carry out the obligations of this contract in full compliance with all of the requirements imposed by the *Minimum Wage Law* pursuant to M.G.L. c.151, Sec. 1, *et seq.*, and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as amended. The Contractor will, at all times, comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of M.G.L. c. 149, Sec. 26 and Sec. 27D thereof, as amended as shall be in force and as amended.
- 7.** The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the property of the Town and others, including adjacent property, from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly due to errors in the Contract Documents or caused by agents or employees of the Town, or due to causes beyond the Contractor's control and not the Contractor's fault or negligence.
- 8.** The Contractor shall take all necessary precautions for the safety of employees on the work, and shall comply with all applicable provisions of federal, state and local laws and codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Contractor will erect and properly maintain, at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public, shall post danger signs warning against the hazards created by such features of construction such as pits, protruding nails, hosts, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and shall designate a responsible member of its organization on the work, whose duty shall be the prevention of accidents.
- 9.** The Town shall, at all times, have access to the work wherever it is in preparation or progress and the Contractor shall provide suitable accommodations for such access.

10. The Contractor shall appoint a competent superintendent and foreman and any necessary assistants, all of whom shall be satisfactory to the Town. If the Town, in its sole discretion, determines that the construction superintendent, foreman, or assistants are unacceptable to the Town, then upon seven days notice from the Town, the Contractor shall replace such person or persons with people acceptable to the Town.
11. The Contractor shall give efficient supervision to the work, using its best skill and attention. The Contractor shall carefully study and compare the drawings, specifications and other instructions and shall at once report to the Town any error, inconsistency or omission which shall be discovered. Included in this responsibility shall be supervision of all work performed by subcontractors on the work.
12. Notwithstanding any other provision of this Contract to the contrary, if the Contractor should neglect to prosecute the work properly, or fail to perform the contract or any of its provisions, the Town, upon three days written notice, may, without prejudice to any other right and remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
12. **Inspection by the Town's Project Representative.**
- 12.1 The Town shall have the right to designate a Project Representative who may make periodic visits to the site to generally familiarize the Town with the progress and quality of the work, and to generally determine if the work is proceeding in accordance with the contract documents. The Project Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and will not be responsible for the Contractor's failure to carry out the construction work in accordance with the Contract Documents. During such visits and on the basis of these observations while at the site, the Project Representative will keep the Town informed on the progress of the work, will endeavor to guard the Town against defects and deficiencies in the work of contractors, and may condemn structural work as failing to conform to the Contract Documents. The Project Representative shall have authority to act on behalf of the Town only to the extent expressly delegated by the Town, which shall be shown to the Contractor, and shall have authority to stop the work whenever such stoppage may reasonably be necessary to insure the proper execution of the Contract.
- 12.2 In connection with the work, the Project Representative shall not be responsible for construction methods, means, techniques, sequences or procedures employed by the Contractor or the Contractor's safety programs, requirements, regulations, or precautions.
13. **Decisions of the Project Representative.**
- 13.1 The Project Representative shall, within a reasonable time, make decisions on all claims of the Town or the Contractor and on all other matters relating to the

execution and progress of the structural work or the interpretation of the Contract Documents.

13.2 The Project Representative's decision, in matters relating to the project, shall be final, if within the terms of the Contract Documents.

13.3 If, however, the Project Representative fails to render a decision within ten (10) calendar days after the parties have presented their evidence, either party may then avail itself of the remedies provided in this Contract or available to it by law. If the Project Representative renders a decision after such remedies have commenced, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties concerned.

14. Use of Premises by the Contractor.

14.1 The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, by-laws, permits or directions of the Town and shall not unreasonably encumber the premises with its materials.

14.2 The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

15. Maintenance of Premises.

The Contractor shall, at all times, keep the premises free from accumulation of waste materials or rubbish and debris caused by its employees or work, and at the completion of the work, it shall remove all its rubbish from and about the work site and all its tools, scaffolding and surplus materials and shall leave its work "broom-clean", or its equivalent, unless more exactly specified. In case of dispute, the Town may remove the rubbish and charge the cost to the several contractors, as the Town shall determine to be just in its sole discretion.

16. Right to Terminate.

In addition to any other remedies herein provided and notwithstanding any other provisions hereof to the contrary, if the Contractor should: (i) be adjudged a bankrupt; (ii) make a general assignment for the benefit of creditors; (iii) have a receiver appointed on account of its insolvency; (iv) persistently or repeatedly refuse or fail to supply enough personnel and resources to perform the contract; (v) fail to make prompt payment to subcontractors or to providers of materials or labor; (vi) persistently disregard laws and regulations or lawful directives of the Town; or (vii) be guilty of a substantial violation of any provision of the Contract, then the Town may, without prejudice, to any other right or remedy and after giving the Contractor (or any surety) seven (7) days written notice, terminate the contract and the employment of the Contractor and take possession of the

premises and any/all materials, tools and appliances thereon. The Town may finish the remainder of the work by whatever method it deems appropriate.

In such cases, the Contractor shall not be entitled to receive any further payment until the work is complete. If the unpaid amount owed to the Contractor for work already finished shall exceed the expense of completing the work, including compensation for additional architectural, managerial, legal and administrative services, such excess amount shall be paid to the Contractor. If such expenses shall exceed such unpaid balances, the Contractor shall pay the difference to the Town.

The Contractor shall not be relieved of liability to the Town by virtue of any termination of this Contract, and any claim for damages against the Contractor relating to the Contractor's performance under this contract shall survive any termination hereunder.

Notwithstanding any other provision of this Contract, the Town reserves the right, at any time, in its sole discretion to suspend or terminate this Contract, in whole or in part, for its convenience upon seven (7) days written notice to the Contractor. The Town shall incur no liability by reason of such termination except for the obligation to pay compensation for all work performed by the Contractor and accepted by the Town to the termination date.

17. Progress Payments.

17.1 The Contractor shall submit to the Town an itemized application for payment, supported to the extent required by the Town by invoices and/or other vouchers, showing payments for materials and labor, payments to subcontractors and such other evidence of the Contractor's right to payment.

17.2 The Contractor shall, before the first application, submit to the Town a schedule of values of the various parts of the work, including quantities aggregating the total sum of the Contract, divided so as to facilitate payments to subcontractors, made out in such form as the Town and the Contractor may agree upon, and, if required, supported by such evidence as to its correctness. This schedule, when approved by the Town, shall be used as a basis for payment, unless it is found to be in error. If applying for payments, the Contractor shall submit a statement based upon this schedule.

18. Withholding of Payments.

18.1 The Town may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary in its reasonable opinion to protect the public interests of the Town of Hopedale from loss on account of:

- (i.) Defective work not remedied.

- (ii.) Claims filed or reasonable evidence indicating probable filing of claims.
- (iii.) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- (iv.) A reasonable doubt that the Contract can be completed for the balance then unpaid.
- (v.) Damage to another contractor.
- (vi.) Delays resulting in liquidated damages.

18.2 Withholding of payments shall be in strict compliance with statutory requirements.

19. Claims by Contractor and Liability of Town.

All claims by the Contractor against the Town shall, unless otherwise provided by law, be initiated by a written claim submitted to the Town no later than seven (7) calendar days after the event or the first appearance of the circumstances causing the claim. The claim shall set forth in detail all known facts and circumstances supporting the claim. The Contractor shall continue its performance under this contract regardless of the submission or existence of any claims.

The limit of liability of the Town under this Agreement is limited to the compensation provided herein for work actually performed, and shall in no event include liability for delays or for incidental, special or consequential damages or lost profits or for damages or loss from causes beyond the Town's reasonable control.

20. Damages for Delay.

If the Contractor is delayed at any time in performing or furnishing the work by any act or neglect of the Town or its consultants, including, without limiting the generality of the foregoing, delay caused by failure of the site being available for work or ready to accept the Contractor's work of the failure of the Town or its consultants to furnish any work, materials, information, documentation or decisions, the Contractor shall have no claim to any damages, costs, or expenses of any kind of nature, for any suspension, delay, interruption, hindrance or acceleration of its work. Furthermore, to the extent Contractor is delayed, it shall be entitled to an extension of time to its period of contract performance upon authorization by the Town and the Contractor will have no claim for damages, cause, or expenses of any kind or nature for any suspension, delay, interruption, or acceleration of its work in the event that the Town grants such an extension of time to the Contractor's performance.

21. Liquidated Damages.

If Contractor shall neglect, fail, or refuse to complete the work within the time specified or any proper extension thereof granted by the Town, then the Contractor agrees, as part consideration for the awarding of this Contract, to pay Two Hundred fifty (\$250.00) Dollars, per day, to the Town, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. The amount is fixed and agreed upon by and between the Town and the Contractor to be a reasonable approximation of the amount of damages which the Town would sustain, because of the impracticability and difficulty of fixing and ascertaining the actual damages the Town would, in such event, sustain.

22. Contractor's Mutual Responsibility.

Should the Contractor cause damage to any separate subcontractor on the work, the Contractor agrees, upon due notice, to settle with such Subcontractor by agreement, or by recourse to remedies provided by law or by the provisions of the contract. If such separate Subcontractor sues the Town on account of any damage alleged to have been sustained, the Town shall notify the Contractor, who shall defend such proceedings at the Contractor's expense and, if any judgment against the Town arises therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Town including attorney's fees and related costs of litigation.

23. Separate Contracts.

23.1. The Town reserves the right to let other Contracts in connection with this work under similar General Conditions. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

23.2. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Town any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work except as to defects which may develop in the other contractor's work after the execution of its work.

23.3. To insure the proper execution of its subsequent work, the Contractor shall measure work already in place and shall at once report to the Town any discrepancy between the executed work and the Drawings.

24. Subcontracts.

- 24.1.** All Subcontracts shall be awarded in conformity with the requirements of M.G.L. c. 149, Sec. 44A-L.
- 24.2.** The Contractor agrees that it is as fully responsible to the Town for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.
- 24.3.** Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Town.

25. Contractor-Subcontractor Relations.

The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract, the General Conditions of the Contract, the Supplementary General Conditions, the Drawings and Specifications, as far as applicable to its work, including the provisions of the General M.G.L. c.149, Section 44A, *et seq.*

26. The Contractor's Insurance.

Notwithstanding any other provisions of this Contract to the Contrary and in addition to any requirements set forth in the Contract, the Contractor shall provide and maintain the following insurance:

- 26.1.** The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.
- 26.2.** *Liability Insurance Requirements.* In addition to the liability insurance requirements set forth in the Contract, the liability insurance shall include all major divisions and shall be on a comprehensive general basis including Premises and Operations, Owners and Contractor's Protective, Products and Completed Operations, and Owned, Non-owned and Hired Motor Vehicles. All such insurance shall be written for not less than any limits of liability required by law, unless otherwise provided in the contract documents.

The Contractor's insurance shall include:

a. Excess Liability (Umbrella) Insurance, \$3,000,000

b. Excess Liability (Umbrella) Insurance (Subcontractors), \$1,000,000 or one and one-half (1.5) times the value of the subcontract, whichever is higher.

26.3. The above insurance policies shall also be subject to the following requirements:

26.3.1. Insurance coverage for the Contractor's Comprehensive General Liability, as hereinafter specified under Paragraph entitled "Protective Liability Insurance" shall be written by one and the same insurance company to avoid the expense of duplicate and/or overlapping coverage and to facilitate and expedite the settlement of claims.

26.3.2. All premium costs shall be included in the Contractor's bid.

27. Protective Liability Insurance.

27.1. The Contractor shall purchase and maintain such insurance as described in the preceding paragraph as will protect the Town from claims which may arise from operations under the Contract, including operations performed for the named insureds by independent contractors and general inspection thereof by the named insureds.

27.2. The Contractor shall also purchase and maintain such insurance as will protect the Town against Automobile Non-Ownership Liability in connection with the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

27.3. The limits of liability for coverage required under the Contract shall be as specified within the Contract documents.

27.4 The Town shall be named as an additional insured on the above referenced liability Policies, and the Contractor's insurance shall be the primary coverage. The cost of such insurance, including required endorsements and amendments, shall be the sole responsibility of the Contractor.

28. Liens.

Neither the Final Payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Town a complete release of all liens arising out of the Contract, or receipts, in full, in lieu thereof and, if required in either case, an affidavit that, as far as it has personal knowledge or information, the releases and

receipts include all the labor and material for which a lien could be filed. The Contractor shall comply with all statutory provisions M.G.L. c.254 and c. 249, as amended (as a minimum requirement).

29. Guarantees and Warrantees.

- 29.1.** The Contractor guarantees and warrants to the Town that all labor furnished under this Contract will be fully competent to perform all the tasks undertaken for a period of two (2) years from date of substantial completion, that the product of such labor will yield only first-class results according to the highest standards of the trade, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective. Construction shall pay any damages, expenses and fees including attorneys and engineers associated with the correction of the work.
- 29.2.** If at any time any part of the work so constructed, under the terms of this contract, shall, in the opinion of the Board of Selectmen or Designee require repairing due to defective workmanship or materials furnished by the Contractor, he may notify the Contractor in writing to make the required repairs. If the Contractor shall neglect to start such repairs within ten days of the date of giving it notice thereof and to complete the same to the satisfaction of the Board of Selectmen or Designee with reasonable dispatch, then the latter may employ other persons to make such repairs. The Town shall charge the expense thereof to the Contractor and may use any moneys still retained to pay for the same, and if such sum is insufficient, the Contractor shall be obligated to pay the balance thereof.
- 29.3.** All guarantees and warranties required in the various Sections of the Specifications which originate with a Subcontractor or Manufacturer must be delivered to the Town before final payment to the Contractor may be made for the amount of that subtrade or for the phase of work to which the guarantee or warranty relates. The failure to deliver a required guarantee or warranty shall be held to constitute a failure of the Subcontractor to fully complete his work in accordance with the Contract Documents. The Contractor's obligation to correct work is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications.

This Supplement “C” to the attached Contract is intended to take effect as a sealed instrument. Witness our hands and seals hereto:

Dated: _____

The Town of Hopedale by:

Board of Selectmen or its Designee
(Town Administrator),
with no personal liability, hereunto duly authorized

Department/Division Head,
with no personal liability, hereunto duly authorized

Town Accountant
Certified as to Appropriation,
with no personal liability, hereunto duly authorized

Town Counsel
Approved as to Legal Form

The Contractor by: _____
(Authority or Agency)



Email: agreen@almarllc.com
Mailing: PO Box 662
Medfield, MA 02052

Web: www.almarllc.com
Phone: (508) 813-2275
Fax: (508) 242-9972

Historic References

Job: Jason Russell House - Phase 2 Repairs
Location: 7 Jason Street, Arlington, MA 02476
Owner: Arlington Historic Society
Scope: Repair/Replace Wood Sill/Sheathing
Cost: 92,420
Dates: 9/14/2019
Contact: **Name:** Stuart Brorson
Phone: 781-648-4300
Email: sdb@cloud9.net

Job: Window Masonry Repairs
Location: Haverhill, MA - 151 Essex Street
Owner: Historic New England
Scope: Window Masonry Repairs
Cost: 69,025
Dates: 1/14/2020
Contact: **Name:** Jodi Black
Phone: 617-997-5580
Email: jblack@historiconewengland.org

Job: Repaint Historic Structure
Location: Longfellow House
Owner: National Park Services
Scope: Paint, Refurbish and Deleading
Cost: 133,556
Dates: 8/5/2019
Contact: **Name:** David Barceleau
Phone: 617-242-5786
Email: david_barceleau@nps.gov

Job: Gate Removal, Masonry, Painting
Location: Haverhill, MA - 151 Essex Street
Owner: Historic New England
Scope: Gate Removal, Masonry, Painting
Cost: 13,106
Dates: 7/23/2019
Contact: **Name:** Jodi Black
Phone: 617-997-5580
Email: jblack@historiconewengland.org

Job: Boardman House
Location: 17 Howard Street, Saugus, MA
Owner: Historic New England
Scope: Roof Replacement, Chimney Repair
Cost: 87,600
Dates: 7/23/2019
Contact: **Name:** Jodi Black
Phone: 617-997-5580
Email: jblack@historiconewengland.org

Job: Robert Treat Paine Estate
Location: Stonehurst - Waltham, MA 02452
Owner: City of Waltham
Scope: Wood Shingle Roof
Cost: 213,223
Dates: 10/17/2018
Contact: **Name:** Karle Packard
Phone: 978-369-2340
Email: kpackard@redhawk

Job: Springfield Armory National Historic Site
Location: Springfield, MA
Owner: National Park Service
Scope: Slate Roofing, Copper Work & Masonry
Cost: 127,000
Dates: 10/19/2017
Contact: **Name:** Richard Chilcoat
Phone: 978-970-5167
Email: richard_chilcoat@nps.gov

Job: Minuteman National Park Roof Replacement
Location: Swartz House & Garage Roof, Lincoln, MA
Owner: National Park Service
Scope: Asphalt Shingle Roof
Cost: 14,000
Dates: 9/11/2017
Contact: **Name:** Jodi Black
Phone: 617-997-5580
Email: jblack@historiconewengland.org

Job: Beauport House
Location: Gloucester, MA 01930
Owner: Historic New England
Scope: Repair Gatehouse/Tool Shed
Cost: 16,400
Dates: 7/12/2017
Contact: **Name:** Jodi Black
Phone: 617-997-5580
Email: jblack@historiconewengland.org

Job: Window Installation - 5th Floor
Location: Haverhill, MA - 151 Essex Street
Owner: Historic New England
Scope: Window Installation
Cost: 14,000
Dates: 3/15/2017
Contact: **Name:** Jodi Black
Phone: 617-997-5580
Email: jblack@historiconewengland.org



Email: agreen@almarllc.com
Mailing: PO Box 662
Medfield, MA 02052

Web: www.almarllc.com
Phone: (508) 813-2275
Fax: (508) 242-9972

Job: Rocky Hill Meeting House Roof Replacement
Location: 4 Old Portsmouth Rd, Amesbury, MA
Owner: Historic New England
Scope: Wood Shingle Roof
Cost: **89,850**
Dates: 6/1/2016
Contact: **Name:** Jodi Black
Phone: 617-997-5580
Email: jblack@historicnewengland.org

Job: Fish & Wildlife Services
Location: 300 Westgate Center Dr., Hadley, MA
Owner: National Park Service
Scope: Structural Beam Repair and Painting
Cost: **42,100**
Dates: 2/12/2016
Contact: **Name:** Laura Conant
Phone: 413-253-8389
Email: laura_conant@fws.gov

Job: Vanderbilt Mansion Historic Site
Location: 4097 Albany Post Rd, Hyde Park, NY
Owner: National Park Services
Scope: Wood Shingles, Copper Roofing
Cost: **246,410**
Dates: 11/30/2015
Contact: **Name:** Justin Townshend
Phone: 978-886-3440
Email: jtownshend@cornerstone-serv.com

Job: Frederick Law Oldmestad & JFK National Historic Site
Location: 99 Warrant St & 83 Beale St, Brookline, MA
Owner: National Park Service
Scope: Wood Gutters
Cost: **192,900**
Dates: 11/20/2015
Contact: **Name:** Blaise Davi
Phone:
Email: blaise_davi@nps.org

Job: William Brattle House
Location: 42 Brattle Street, Cambridge, MA
Owner: Cambridge Center for Adult Education
Scope: Historic Window Replacement
Cost: **134,294**
Dates: 6/30/2014
Contact: **Name:** David Solomon
Phone: 617-308-4415
Email: constructiveadvisor@comcast.net

Job: Commandant House
Location: 1 Constellation Warf, Charlestown, MA
Owner: National Park Services
Scope: Slate Shingle, Copper Decking, EPDM Roofing
Cost: **200,000**
Dates: 9/7/2013
Contact: **Name:** Craig Chenevert
Phone:
Email: craig_chenevert@nps.org

Job: 74 Greenleaf - George F. Barker Estate
Location: Quincy, MA
Owner: City of Quincy
Designer: Holmes & Edwards, Inc.
Scope: Slate Roof Replacement and Carpentry
Value: **Original:** \$100,250 **Final:** **\$100,250**
Dates: 9/14/18 - 1/15/19
Contact: **Name:** Paul Hines
Phone: 617-376-1417
Email: phines@quincyma.gov

Job: Harvard Library - Roof Repair
Location: 4 Pond Rd, Harvard, MA 01451
Owner: Town of Harvard
Designer:
Scope: Slate Roof Repair & New Copper Flashing
Value: **Original:** \$19,000 **Final:** **\$19,000**
Dates: 6/24/20 - 7/3/2020
Contact: **Name:** Marc Green
Phone: 508-250-2034
Email: mgreen@eagleenterprises.us

Company Information

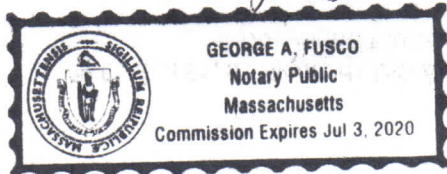
Vendor Number	1011	Type of entity	Corporation
Company Name	Almar LLC		
Address	PO Box 662		
City/Town	Medfield		
State	Massachusetts	Zip Code	02052
Phone	(508) 813-2275	Fax	(508) 242-9972

By signing and notarizing this document you certify that all information provided is accurate. You also acknowledge that you have read, and understand all the terms and conditions associated with electronic bidding. Your signature on this form authorizes you to submit electronic bids on behalf of the vendor identified on this form.

State of MASS County of Worcester On this 14 day of January 2014 before me, the undersigned notary public, ALEX GREEN personally appeared, proved to me through satisfactory evidence which were known personally to be the person whose name is signed on the preceding document in my presence

NOTARY SEAL

Notary Public: My Commission expires:



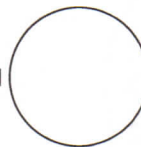
Signature must be by individual listed above and done in blue ink only. Please sign within the box below.

Name Alex Green
Title Managing Member



Almar LLC, Alex Green - Managing Member
Apr 14, 2014

Corporate seal



Once the document has been signed and notarized send the original copy to BidDocs ONLINE no later than 3 business days prior to the bid date. This form must be sent via a delivery service that can trace the delivery to BidDocs ONLINE. An electronic bid may not be submitted unless this form is returned directly to BidDocs ONLINE.

BidDocs ONLINE

P.O. Box 51, 61 Skyfields Drive, Groton, MA 01450 - Phone: (978) 888-3350 - Fax: (978) 449-0469

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FORM FOR GENERAL BID

TO THE AWARDING AUTHORITY:

A. The undersigned proposes to furnish all labor and materials required for **Roof Restoration, Bancroft Memorial Library [BDO #4820]** for the Town of Hopedale in Hopedale Massachusetts in accordance with Contract Documents prepared by Spencer Sullivan and Vogt for the contract price specified below, subject to additions and deductions according to the terms of the specifications.

B. This bid includes addenda numbered: 1

C. The proposed contract price is:

Two hundred eighteen thousand four hundred ninety dollars \$ 218,490.00

For alternate No 1 Add \$ 1,500.00 Subtract \$.00

D. The subdivision of the proposed contract price is as follows:

ITEM 1. The work of the general contractor, being all work other than that covered by **ITEM 2.**

TOTAL OF ITEM 1 \$ 218,490.00

ITEM 2. Sub-bids as follows:

Sub-trade	Name of Filed Sub-bidder	Sub-Bid Amount	Bond Required
-----------	--------------------------	----------------	------------------

TOTAL OF ITEM 2 \$ 0.00

The undersigned agrees that each of the above named sub-bidders will be used for the work indicated at the amount stated, unless a substitution is made. The undersigned further agrees to pay the premiums for the performance and payment bonds furnished by sub-bidders as requested herein and that all of the cost of all such premiums is included in the amount set forth in Item 1 of this bid.

The undersigned agrees that if he is selected as general contractor, he will promptly confer with the awarding authority on the question of sub-bidders; and that the awarding authority may substitute for any sub-bid listed above a sub-bid filed with the awarding authority by another sub-bidder for the sub-trade against whose standing and ability the undersigned makes no objection; and that the undersigned will use all such finally selected sub-bidders at the amounts named in their respective sub-bids and be in every way as responsible for them and their work as if they had been originally named in this general bid, the total contract price being adjusted to conform thereto.

- E. The undersigned agrees that, if he is selected as general contractor, he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the awarding authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price; provided, however, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards made subject to section 44A.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Almar LLC

NAME OF BIDDER



Almar LLC, Alex Green - Managing Member

Jan 28, 2021

SIGNATURE & TITLE OF PERSON SIGNING BID

PO Box 662, Medfield, MA 02052

BUSINESS ADDRESS

BID BOND

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

CONTRACTOR:

(Name, legal status and address)
Almar LLC

10 Rhododendron Ave
Medfield, MA 02052

SURETY:

(Name, legal status and principal place of business)

North American Specialty Insurance Company

1200 Main St., Suite 800
Kansas City, MO 64105

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)
Town of Hopedale

MA

BOND AMOUNT: \$ Five Percent of the Attached bid (5%)

PROJECT:

(Name, location or address, and Project number, if any)

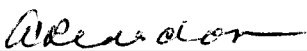
Roof Repairs & Restoration Bancroft Memorial Library

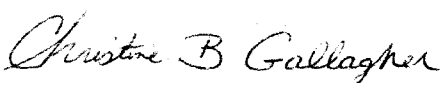
The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this **28th** day of **January, 2021**


(Witness)


(Witness)

Almar LLC

(Principal)

(Seal)

(Title)

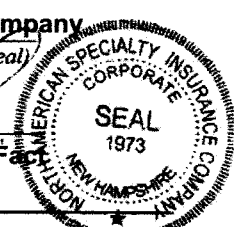
North American Specialty Insurance Company

(Surety)

(Seal)

(Title)

Adam W. DeSanctis, Attorney-in-Fact



Agency ID# 6024496

SWISS RE CORPORATE SOLUTIONS

**NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY
WESTPORT INSURANCE CORPORATION GENERAL POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Kansas City, Missouri and Washington International Insurance Company a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Kansas City, Missouri, and Westport Insurance Corporation, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri does hereby make, constitute and appoint:

JAMES A. AXON, GREGORY D. JUWA, MICHAEL F. CARNEY, WILDER PARKS, JR., PAUL A. PATALANO, LESLIANN J. ORTIZ, ADAM W. DeSANCTIS, MICHAEL T. GILBERT, CHRISTINE B. GALLAGHER,

BRYAN F. JUWA, DAVID A. BOUTIETTE, RICHARD F. CARUSO, REBECCA SHANLEY, JONATHAN E. DUGGAN, LINDSAY A. RAFFAEL, and JORDAN J. TIRONE JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:


ONE HUNDRED TWENTY FIVE MILLION (\$125,000,000.00) DOLLARS

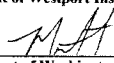
This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on March 24, 2000 and Westport Insurance Corporation by written consent of its Executive Committee dated July 18, 2011.

"RESOLVED, that any two of the President, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By 
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company
& Senior Vice President of Westport Insurance Corporation

By 
Mike A. Ito, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company
& Senior Vice President of Westport Insurance Corporation



IN WITNESS WHEREOF, North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 10th day of JANUARY, 2019.

**North American Specialty Insurance Company
Washington International Insurance Company
Westport Insurance Corporation**

State of Illinois
County of Cook SS:

On this 10th day of JANUARY, 2019, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of

Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation and Michael A. Ito Senior Vice President of Washington International Insurance Company and Senior Vice President

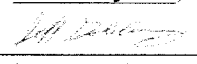
of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.




M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Vice President and Assistant Secretary of North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 28th day of January, 2021.


Jeffrey Goldberg, Vice President & Assistant Secretary of Washington International Insurance Company &
North American Specialty Insurance Company & Vice President & Assistant Secretary of Westport Insurance Corporation



The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Division of Capital Asset Management and Maintenance
One Ashburton Place
Boston, Massachusetts 02108

Tel: (857) 204-1305

Fax: (617) 727-8284

CHARLES D. BAKER
GOVERNOR

Email: Certification.DCamm@mass.gov

MICHAEL J. HEFFERNAN
SECRETARY
ADMINISTRATION & FINANCE
CAROL W. GLADSTONE
COMMISSIONER

KARYN E. POLITO
LIEUTENANT GOVERNOR

First Amended and Restated
Prime Certificate of Contractor Eligibility
CONTRACTOR IDENTIFICATION NUMBER: 3187

This Amended and Restated Certificate Shall be Used for Submitting Prime Bids Only.

The prior Certificate of Contractor Eligibility with an Approval Date of December 27, 2020 is hereby superseded, amended and restated by this Certificate with changes to the Information contained in the following Sections(s): 4

- 1. CERTIFICATION PERIOD:** This Certificate is valid from December 27, 2020 to December 26, 2021*
- 2. CONTRACTOR'S NAME:** ALMAR LLC
- 3. CONTRACTOR'S ADDRESS:** PO BOX 662
MEDFIELD, MA 02052
- 4. WORK CATEGORIES:** This Contractor is certified to file bids under Massachusetts General Laws Chapter 149, Chapter 149A and Chapter 25A in the following Categories of Work:
- Historical Roofing, Roofing
- 5. EVALUATIONS:**
- | | |
|------------------------------------|----|
| Number of Projects Evaluated: | 9 |
| Average Project Evaluation Rating: | 92 |
| Number of Projects Below Passing: | 1 |
- 6. PROJECT LIMITS:**
- | | |
|--------------------------------------|-------------|
| Single Project Limit (SPL): | \$704,000 |
| Aggregate Work Limit (AWL): | \$2,500,000 |
| General Building Construction Limit: | N/A |
- 7. SUPPLIER DIVERSITY OFFICE CERTIFICATION:** N/A

Carol W. Gladstone, Commissioner

1/26/2021

Approval Date

*** NOTICE TO CONTRACTORS:** *If this contractor becomes uncertified for any reason this Certificate will immediately become void. Complete Applications for Renewal of Contractor Eligibility are due no later than three months PRIOR to the Expiration Date of the Certification Period shown above.*

Reviewer's Initials: MR

DOCUMENT 00 41 00.20 - UNIT PRICES FORM

PART 1 - GENERAL

1.1 BID INFORMATION

- A. Bidder: Almar, LLC.
- B. Project Identification: BANCROFT MEMORIAL LIBRARY, ROOF REPAIRS AND RESTORATION.
- Project Location: 50 Hopedale Street, Hopedale, Massachusetts.

1.2 BID FORM SUPPLEMENT

- A. This form is required to be attached to the Form of General Bid.
- B. The undersigned Bidder proposes the amounts below be added to or deducted from the Contract Sum on performance and measurement of the individual items of Work, should additional quantities be required beyond those indicated on the Contract Documents.
- C. Unit Price descriptions are found in this manual in Division 1 Section "01 02 50 Unit Prices"

1.3 UNIT PRICES

- A. Unit Price No. 1 :
1. Description: Replacement of individual missing or broken slate in addition to quantities indicated on the Drawings
- Unit of Measurement: Per individual slate location
- One Hundred Dollars (\$ 100) per slate.

1.4 SUBMISSION OF BID SUPPLEMENT

Respectfully submitted this 28 day of January, 2021.

Submitted By: Almar, LLC
(Insert name of bidding firm or corporation)

Authorized
Signature: *Alex Green*
(Handwritten signature)

Signed By: Alex Green
(Type or print name)

Title: Managing Member
(Owner/Partner/President/Vice President)

END OF DOCUMENT 00 41 00.20

SPECIAL NOTICE TO AWARDING AUTHORITY
BIDDERS' UPDATE STATEMENTS ARE NOT PUBLIC RECORDS
AND ARE NOT OPEN TO PUBLIC INSPECTION (M.G.L. C.149, §44D)

EFFECTIVE MARCH 30, 2010

Commonwealth of Massachusetts
Division of Capital Asset Management
PRIME/GENERAL CONTRACTOR
UPDATE STATEMENT

TO ALL BIDDERS AND AWARDING AUTHORITIES

A COMPLETED AND SIGNED PRIME/GENERAL CONTRACTOR UPDATE STATEMENT MUST BE SUBMITTED WITH EVERY PRIME/GENERAL BID FOR A CONTRACT PURSUANT TO M.G.L. c.149, §44A AND M.G.L. c. 149A. ANY PRIME/GENERAL BID SUBMITTED WITHOUT AN APPROPRIATE UPDATE STATEMENT IS INVALID AND MUST BE REJECTED.

Caution: This form is to be used for submitting Prime/General Contract bids. It is not to be used for submitting Filed Sub-Bids or Trade Sub-Bids.

AWARDING AUTHORITIES

If the Awarding Authority determines that the bidder does not demonstrably possess the skill, ability, and integrity necessary to perform the work on the project, it must reject the bid.

BIDDER'S AFFIDAVIT

I swear under the pains and penalties of perjury that I am duly authorized by the bidder named below to sign and submit this Prime/General Contractor Update Statement on behalf of the bidder named below, that I have read this Prime/General Contractor Update Statement, and that all of the information provided by the bidder in this Prime/General Contractor Update Statement is true, accurate, and complete as of the bid date.

01/28/2021

Bid Date

Almar LLC

Print Name of Prime/General Contractor

Roof Restoration, Bancroft Memorial
Library [BDO #4820]

Project Number (or name if no number)

PO Box 662 - Medfield,

Business Address

Town of Hopedale

Awarding Authority

(508) 813-2275

Telephone Number

SIGNATURE =>



Almar LLC, Alex Green - Managing Member
Jan 20, 2021

PART 1 - COMPLETED PROJECTS

LIST ALL PUBLIC AND PRIVATE *BUILDING* PROJECTS YOUR FIRM HAS COMPLETED SINCE THE DATE OF APPLICATION FOR YOUR MOST RECENTLY ISSUED (NOT EXTENDED OR AMENDED) DCAM CERTIFICATE OF ELIGIBILITY. YOU MUST REPORT ALL REQUESTED INFORMATION NOT PREVIOUSLY REPORTED ON THAT DCAM APPLICATION*.

PROJECT TITLE & LOCATION	WORK CATEGORY	CONTRACT PRICE	START DATE	DATE COMPLETED
Stoughton Roof Replacement - Pratts Court	Roofing	40950	11/20/2020	11/28/2020

Attach additional sheets if necessary

* If your firm has been terminated from a project prior to completion of the work or has failed or refused to complete its work under any contract, full details and an explanation must be provided. See Part 3 of this Update Statement.

PROVIDE THE FOLLOWING REFERENCE INFORMATION FOR EACH COMPLETED PROJECT LISTED ON THE PREVIOUS PAGE.

PROJECT TITLE	COMPANY NAME	CONTACT PERSON	TELEPHONE
Stoughton Pratts Court	OWNER: Stoughton Water Department	Phil McNulty	pmcnulty@stoughton-ma.gov
	DESIGNER: N/A		
	GC: Almar, LLC	Alex Green	508-813-2275
	OWNER:		
	DESIGNER:		
	GC:		
	OWNER:		
	DESIGNER:		
	GC:		
	OWNER:		
	DESIGNER:		
	GC:		

Is your company or any individual who owns, manages or controls your company affiliated with any owner, designer or general contractor named above, either through a business or family relationship? ☐ YES ☒ NO

Are any of the contact persons named above affiliated with your company or any individual who owns, manages or control your company, either through a business or family relationship? ☐ YES ☒ NO

If you have answered YES to either question, explain. _____

PART 2 - CURRENTLY HELD CONTRACTS

LIST ALL PUBLIC AND PRIVATE BUILDING AND NON-BUILDING *CONSTRUCTION* PROJECTS YOUR FIRM HAS UNDER CONTRACT ON THIS DATE REGARDLESS OF WHEN OR WHETHER THE WORK COMMENCED.

1	2	3	4	5	6	7	8	9
PROJECT TITLE & LOCATION	WORK CATEGORY	START AND END DATES	ON SCHEDULE (yes / no)	CONTRACT PRICE	% NOT COMPLETE	\$ VALUE OF WORK NOT COMPLETE (col. 5 X col. 6)	NO. OF YEARS REMAINING (see note below)	ANNUALIZED VALUE OF INCOMPLETE WORK (col. 7 + col. 8) (divided by)
Easton - Elise Circle	Roofing	10/1/20	yes	147,000	20%	29,580	1	29,580
Malden - 275 Newland	Roofing	7/29/20	yes	363,000	10%	36,300	1	36,300
Jason Russell - Phase III	Roofing	9/22/20	yes	38,900	10%	3,890	1	3,890
Boston PD - Maint.	Roofing	7/20 - 6/21	yes	110,000	50%	55,000	1	55,000
Brookline - Maint	Roofing	1/19 - 1/24	yes	76,295	60%	45,777	3	45,777
Stoughton Train Station Roof Repairs	Roofing	12-15-2020	yes	135,000	100%	135,000	1	135,000

ANNUALIZED VALUE OF ALL INCOMPLETE CONTRACT WORK (Total of Column 9)

\$ 305,547

Column 8

- If less than one year is left in the project schedule, write 1.
- If more than 12 months are left in the project schedule, divide the number of months left in the project schedule by 12 (calculate to three decimal places).

PROVIDE THE FOLLOWING REFERENCE INFORMATION FOR EACH INCOMPLETE PROJECT LISTED ON THE PREVIOUS PAGE.

PROJECT TITLE	COMPANY NAME	CONTACT PERSON	TELEPHONE
EHA - Elise Circle	OWNER: Easton Housing Authority	Kathy Steiger	housingauthority@eastonhousing.com
	DESIGNER: Blackston Block Architects	Barry Buchinski	barry@blackstoneblock.com
	GC: Almar, LLC	Alex Green	508-813-2275
Malden - Newland/Coleman	OWNER: Malden Housing Authority	Ed Fahey	781-322-3184 or efahey@maldenhousing.org
	DESIGNER: CBI Consulting LLC	Michael Teller	mteller@cbiconsultingllc.com
	GC: Almar, LLC	Alex Green	508-813-2275
Jason Russell-Phase 3	OWNER: Arlington Historical Society	Sara Lundberg	sara@arlingtonhistorical.org
	DESIGNER: Design Associates	Patrick Guthrie	patrick@design-associates
	GC: Almar, LLC	Alex Green	508-813-2275
Boston PD Maint.	OWNER: Boston Police Department	Brenda Harmon	Brenda.Harmon@pd.boston.gov
	DESIGNER:		
Town of Brookline Maint.	GC: Almar LLC	Alex Green	508-813-2275
	OWNER: Town of Brookline	Sara Gooding	617-879-4799
	DESIGNER:		
Stoughton Train Station	GC: Almar, LLC	Alex Green	508-813-2275
	OWNER: Stoughton Housing Authority	Paul Giffune	Paul Giffune@stoughton-ma.gov
	DESIGNER: Drummey Rosane Anderson Inc.	Courtney Southwick	617-964-1700 x113

Is your company or any individual who owns, manages or controls your company affiliated with any owner, designer or general contractor named above either through a business or family relationship? ☐ YES ☒ NO

Are any of the contact persons named above affiliated with your company or any individual who owns, manages or control your company, either through a business or family relationship? ☐ YES ☒ NO

If you have answered YES to either question, explain. _____

PART 3 - PROJECT PERFORMANCE

For Parts 3 and 4, if you answer YES to any question, please provide on a separate page a complete explanation. Information you provide herein must supplement the Application for your most recently issued (not extended or amended) DCAM Certificate of Eligibility. You must report all requested information not previously reported on that DCAM Application for Prime/General Certificate of Eligibility. Include all details [project name(s) and location(s), names of all parties involved, relevant dates, etc.].

	YES	NO
1. Has your firm been terminated on any contract prior to completing a project or has any officer, partner or principal of your firm been an officer, partner or principal of another firm that was terminated or failed to complete a project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Has your firm failed or refused either to perform or complete any of its work under any contract prior to substantial completion?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Has your firm failed or refused to complete any punch list work under any contract?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Has your firm filed for bankruptcy, or has any officer, principal or individual with a financial interest in your current firm been an officer, principal or individual with a financial interest in another firm that filed for bankruptcy?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Has your surety taken over or been asked to complete any of your work under any contract?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Has a payment or performance bond been invoked against your current firm, or has any officer, principal or individual with a financial interest in your current firm been an officer, principal or individual with a financial interest in another firm that had a payment or performance bond invoked?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Has your surety made payment to a materials supplier or other party under your payment bond on any contract?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Has any subcontractor filed a demand for direct payment with an awarding authority for a public project on any of your contracts?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Have any of your subcontractors or suppliers filed litigation to enforce a mechanic's lien against property in connection with work performed or materials supplied under any of your contracts?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Have there been any deaths of an employee or others occurring in connection with any of your projects?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Has any employee or other person suffered an injury in connection with any of your projects resulting in their inability to return to work for a period in excess of one year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

PART 4 - Legal or Administrative Proceedings; Compliance with Laws

Please answer the following questions. Information must supplement all judicial and administrative proceedings involving bidder's firm, which were instituted or concluded (adversely or otherwise) since your firm's Application for your most recently issued (not extended or amended) Certificate of Eligibility. You must report all requested information not previously reported on that DCAM Application for Prime/General Certificate of Eligibility.

The term "administrative proceeding" as used in this Prime/General Contractor Update Statement includes (i) any action taken or proceeding brought by a governmental agency, department or officer to enforce any law, regulation, code, legal, or contractual requirement, except for those brought in state or federal courts, or (ii) any action taken by a governmental agency, department or officer imposing penalties, fines or other sanctions for failure to comply with any such legal or contractual requirement.

The term "anyone with a financial interest in your firm" as used in this Section "I", shall mean any person and/or entity with a 5% or greater ownership interest in the applicant's firm.

If you answer YES to any question, on a separate page provide a complete explanation of each proceeding or action and any judgment, decision, fine or other sanction or result. Include all details (name of court or administrative agency, title of case or proceeding, case number, date action was commenced, date judgment or decision was entered, fines or penalties imposed, etc.).

	YES	NO
1. Have any civil, judicial or administrative proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to the procurement or performance of any construction contract, including but not limited to actions to obtain payment brought by subcontractors, suppliers or others?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Have any criminal proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to the procurement or performance of any construction contract including, but not limited to, any of the following offenses: fraud, graft, embezzlement, forgery, bribery, falsification or destruction of records, or receipt of stolen property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Have any judicial or administrative proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to a violation of any state's or federal procurement laws arising out of the submission of bids or proposals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Have any judicial or administrative proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to a violation of M.G.L. Chapter 268A, the State Ethics Law?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

PART 4 - Legal or Administrative Proceedings; Compliance with Laws (continued)

	YES	NO
5. Have any judicial or administrative proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to a violation of any state or federal law regulating hours of labor, unemployment compensation, minimum wages, prevailing wages, overtime pay, equal pay, child labor or worker's compensation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Have any judicial or administrative proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to a violation of any state or federal law prohibiting discrimination in employment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Have any judicial or administrative proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to a claim of repeated or aggravated violation of any state or federal law regulating labor relations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Have any proceedings by a municipal, state, or federal agency been brought, concluded, or settled relating to decertification, debarment, or suspension of your firm or any principal or officer or anyone with a financial interest in your firm from public contracting?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Have any judicial or administrative proceedings involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled relating to a violation of state or federal law regulating the environment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Has your firm been fined by OSHA or any other state or federal agency for violations of any laws or regulations related to occupational health or safety? Note: this information may be obtained from OSHA's Web Site at www.osha.gov	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Has your firm been sanctioned for failure to achieve DBE/MBE/WBE goals, workforce goals, or failure to file certified payrolls on any public projects?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Other than previously reported in the above paragraphs of this Section I, have any administrative proceedings or investigations involving your firm or a principal or officer or anyone with a financial interest in your firm been brought, concluded, or settled by any local, state or federal agency relating to the procurement or performance of any construction contract?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Are there any other issues that you are aware which may affect your firm's responsibility and integrity as a building contractor?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Almar LLC, Alex Green - Managing Member
Jan 28, 2021 10:29:41

PART 5 - SUPERVISORY PERSONNEL

List all supervisory personnel, such as project managers and superintendents, who will be assigned to the project if your firm is awarded the contract. **Attach the resume of each person listed below.**

NAME	TITLE OR FUNCTION
Alex Green	Project Manager
Marc Green	Superintendent

PART 6 - CHANGES IN BUSINESS ORGANIZATION OR FINANCIAL CONDITION

Have there been any changes in your firm's business organization, financial condition or bonding capacity since the date your current Certificate of Eligibility was issued? ☐ Yes ☒ No

If YES, attach a separate page providing complete details.

PART 7 – LIST OF COMPLETED CONSTRUCTION PROJECTS SUBMITTED TO THE DIVISION OF CAPITAL ASSET MANAGEMENT.

Attach here a copy of the list of completed construction projects which was submitted with your firm's DCAM Application for your most recently issued (not extended or amended) DCAM Certificate of Eligibility. The Attachment must include a complete copy of the entire Section G – "Completed Projects" and the final page – "Certification" (Section J) containing the signature and date that the Completed Projects list (Section G) was submitted to the Division of Capital Asset Management.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT
OF THE TRIAL COURT

LAND COURT
FILED
2021 FEB 10 PM 2:22

WORCESTER, SS

CIVIL ACTION NO.20 MISC 0467 [DRR]

TOWN OF HOPEDALE

Plaintiff

vs.

JON DELLI PRISCOLI and MICHAEL R.
MILANOSKI, as Trustees of the ONE HUNDRED
FORTY REALTY TRUST and
GRAFTON & UPTON RAILROAD
COMPANY,

Defendants

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Mass. R. Civ. P. 41(a)(1)(ii), the parties, by and through undersigned counsel,
hereby stipulate that all claims are dismissed with prejudice and without costs to either side.

Each side to bear their own attorney's fees. All rights of appeal are specifically waived.

TOWN OF HOPEDALE

/s/ Peter F. Durning
Peter F. Durning, BBO# 658660
Peter M. Vetere, BBO# 681661
Mackie Shea Durning, PC
20 Park Plaza, Suite 1001
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617-266-5104
purning@mackieshea.com
pveter@mackieshea.com

JON DELLI PRISCOLI and MICHAEL
R. MILANOSKI, as TRUSTEES of the
ONE HUNDRED FORTY REALTY
TRUST and GRAFTON & UPTON
RAILROAD COMPANY

/s/ Donald C. Keavany, Jr.
Donald C. Keavany, Jr., BBO#631216
Andrew P. DiCenzo, BBO#689291
Christopher, Hays, Wojcik & Mavricos,
LLP
370 Main Street, Suite 970
Worcester, MA
508-792-2800
dkeavany@chwmlaw.com
adicenzo@chwmlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above
document was served upon the attorney of record
for each other party by mail, postage prepaid, electronic mail
(hand-delivering a copy of same) to all counsel of
record on Feb. 10, 2021

/s/ Peter F. Durning

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36464

GRAFTON AND UPTON RAILROAD COMPANY --
VERIFIED PETITION FOR DECLARATORY ORDER

MOTION TO DISMISS PROCEEDING

Grafton and Upton Railroad Company (“GU”) hereby requests the Board to dismiss this proceeding. As explained more fully below, GU and the Town of Hopedale, Massachusetts (the “Town”) have engaged in mediation and discussions that have resulted in the resolution of the issues described in the Verified Petition for Declaratory Order filed by GU with the Board on November 23, 2020. These issues include matters raised by the Town in the litigation it filed in the Land Court in Massachusetts and the preemption issues raised by GU in the Verified Petition.

In order to afford GU and the Town time within which to reach an amicable resolution, the Board, at the request of GU, held this proceeding in abeyance pursuant to decisions entered on December 4, 2020 and January 28, 2021. The latter decision required GU to file a further status report on or before February 24, 2021.

Pursuant to a Settlement Agreement dated February 8, 2021, GU and the Town have resolved the issues raised by the Town in the Land Court litigation and by GU in the Verified Petition. In accordance with the Settlement Agreement, the Town and GU have filed a stipulation of dismissal with the Land Court. The Settlement Agreement also requires GU to

request the Board to dismiss this proceeding. Accordingly, the Board is respectfully requested to dismiss the proceeding.

Respectfully,

/s/James E. Howard

James E. Howard

57 Via Buena Vista

Monterey, CA 93940

831-324-0233

jim@jehowardlaw.com

Attorney for Grafton and
Upton Railroad Company

Dated: February 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2021, I served a copy of the foregoing Motion to Dismiss on counsel for the Town of Hopedale, Massachusetts by email as follows:

Peter F. Durning
Peter M. Vetere
Mackie Shea Durning, PC
20 Park Plaza, Suite 1001
Boston, MA 02116
pdurning@mackieshea.com
pvetere@mackieshea.com

/s/James E. Howard
James E. Howard

Summary of obligations and actions to be addressed following the execution of the Settlement Agreement:

Section	Action	Deadline
1.a	Conveyance of Parcel A to the Town by quitclaim deed.	Fri., April 9 60 days from Feb. 8
1.a.ii & 3	Hopedale Board of Assessors to calculate roll back taxes based on change in use as of Closing – likely April 9.	To be determined at Closing, GURR to pay back w/in 5 days
1.a.viii	Cost Sharing Agreement	No set deadline for review and approval by W&S
1.d.	Consider whether Town wants to accept donation of Parcel D (363R West Street)	next Town Meeting
4.	Negotiate and execute a Purchase & Sale Agreement.	To be complete once survey is done; work could begin now to address wording in P&S
5.b.	Town shall participate in the cost of a survey on a proportional basis (acres of Parcel A against B, C, & E)	Once survey is complete, should be commenced soon because other actions have to wait for this to occur
5.d.	Closing on real estate conveyance	Fri., April 9 60 days from Feb. 8
17.a	File Stipulation of Dismissal in Land Court	Mon. Feb. 15 5 business days from execution of agreement
17.b	Defendants to file Request to Withdraw Petition in STB	Mon. Feb. 15 5 business days from execution of agreement



February 5, 2021

Board of Selectmen
Town of Hopedale
78 Hopedale Street
Hopedale, MA 01747

Re: Programming Advisory

Dear Chairman and Members of the Board:

We are committed to keeping you and our customers informed about changes to Xfinity TV services. As part of that ongoing commitment to keep you informed, we wanted to update you on the following:

Effective April 6, 2021, HD programming subscriptions and compatible equipment will be required to view the Revolt and Aspire channels. To learn more visit www.xfinity.com/HowItWorks.

Effective April 13, 2021, Cartoon Network will no longer be available with Expanded Basic or Kids and Family. It will be available with Digital Preferred. To learn more visit www.xfinity.com/HowItWorks.

Please feel free to contact me at Catherine_Maloney@comcast.com should you have any questions.

Very truly yours,

Catherine Maloney

Catherine Maloney, Sr. Manager
Government Affairs