

**ADDENDUM TO APPLICATION  
FOR APPROVAL OF DEFINITIVE PLAN  
Hopedale Ridge – A Definitive Subdivision Plan**

**Project Narrative & Background**

The Applicants come before the Hopedale Planning Board proposing a ten-lot subdivision, with all lots having frontage on town-owned Overdale Parkway. The previous permitting attempts at this location and subsequent negotiations with the Town of Hopedale through its Select Board have greatly influenced the size and scope of the proposed Hopedale Ridge subdivision. Please allow this supplemental memorandum to highlight certain aspects of the subject property's history, all of which will no doubt be discussed in greater length at the Planning Board's public hearings.

**Title to Overdale Parkway**

Overdale Parkway is owned by the Town of Hopedale, but is not currently accepted as a public road. The Land Court succinctly summarized the Town's acquisition of the roadway as follows: "In 1916, Hopedale began to acquire fifty-foot wide strips of land between Freedom Street and the boundary of the park land for a road. The last parcel needed for this section of road was conveyed to the town in 1945." (*See Ex. 1, at page 3*). There is no recorded evidence that any portion of Overdale Parkway was included in the bounds of the Hopedale Parklands, despite the roadway's proximity to the Parklands and use for access thereto. (*See Ex. 2*).

**Previous Development Application and Related Litigation**

In 1999, Black Brook Realty Corporation applied for approval of a 42-lot subdivision, which was approved by the Hopedale Planning Board but subsequently overturned on appeal. (*See Ex. 1 and Ex. 3*). The Land Court held, and the Appeals Court affirmed, 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." (*See Ex. 3 at 309*).

**Agreement with the Hopedale Select Board**

The Applicants' predecessors-in-interest to the subject property, Virginia A. Larkin and Edward Larkin, reached an agreement with the Town to improve the end of Overdale Parkway. Town Meeting approved a Warrant Article providing for acceptance of the Larkins' "Gift." On August 9, 2021, Black Brook Realty Corp., Mr. Lima, and the Town of Hopedale ratified an agreement to "proceed with the Gift and further clarify their respective rights and obligations under the Warrant Article." (*See Ex. 4 at page 2*). Pursuant to the Agreement, the Applicants agreed to "upgrade the Unimproved Roadway" (Ex. 4, paragraph 2), provide at least "four (4) or five (5) parking spaces" for Parklands access (Ex. 4, paragraph 3), limit any development to 10 single-family lots (Ex. 4, paragraph 4), and deed to the Town or otherwise conservation restrict all of the additional land (Ex. 4, paragraph 6). In exchange for these significant contributions to the public good, Black Brook Realty Corp. and Mr. Lima receive access to their land via Overdale Parkway.

## Current Application

The Applicants are currently proposing a 10-lot, zoning-compliant development. Through the Agreement with the Town, the Applicants have remedied the access issue that plagued the previous development plan, while making significant concessions. The current plan is significantly less dense than the 1999 application, which will ensure Overdale Parkway is not overburdened by new traffic and maintains significant acreage for land conservation. Additionally, the Fire Department has reviewed the cul-de-sac design and road length and has “no issues regarding public safety.” (See Ex. 5). This application allows for a reasonable use of the Applicants’ property, would create necessary new housing in Hopedale, and would benefit the Town of Hopedale and its residents through an expansion of the Parklands and greatly expanded and improved parking at the Overdale Parkway entrance.

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Exhibit List

Exhibit 1 – *Coleman et al. v. Hopedale Planning Board*, Massachusetts Land Court, Case No. 263637, dated January 8, 2013.

Exhibit 2 – Report of Gould Title Company, Inc. with supporting deeds, etc., dated May 18, 2021.

Exhibit 3 – *Parker v. Black Brook Realty Corporation*, Massachusetts Appeals Court, 61 Mass.App.Ct. 308, dated June 9, 2004.

Exhibit 4 – Agreement by and between Black Brook Realty Corp., Ricardo Lima, and the Town of Hopedale, with exhibits, dated August 9, 2021 and recorded with the Worcester South District Registry of Deeds in Book 65903, Page 351.

Exhibit 5 – Letter of Hopedale Fire Department, Chief Thomas Daige, dated February 9, 2022.

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**Exhibit 1**

(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 COFFBY-  
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:

Ann-Marie J. Breuer  
Deputy Recorder

A TRUE COPY

ATTEST

*Ann-Marie J. Breuer*

DEPUTY RECORDER

Dated: January 8, 2003

*PWK*

(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

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S. STRAPPONI, MARJORIE O. CLINTON,  
GEORGE LOVEWELL, and JOYCE  
JACKSON<sup>1</sup>,

Plaintiffs

v.

Miscellaneous Case No. 263677<sup>2</sup>

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

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<sup>1</sup>David 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.)

<sup>2</sup>The 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.<sup>3</sup> 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 allowed<sup>4</sup> 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

<sup>3</sup>There 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.

<sup>4</sup>See 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.<sup>5</sup>)

2. All plaintiffs live in Hopedale, along Overdale Parkway within 1,000 feet of the subdivision<sup>6</sup>. 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 land<sup>7</sup> 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

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<sup>5</sup>These 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.

<sup>6</sup>This distance was obtained by scaling from the definitive plan.

<sup>7</sup>This 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.

<sup>8</sup>The 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.<sup>9</sup> 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
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ORDERS DRAWN ON TOWN TREASURER.

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

[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

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<sup>9</sup>The 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.)<sup>10</sup> Overdale Parkway serves two functions: it provides access to a number of houses which abut it<sup>11</sup>, 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

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<sup>10</sup> 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.

<sup>11</sup> 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 plan<sup>12</sup>. (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. <sup>13</sup> 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 evenings<sup>14</sup>. 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 Msrs. 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."

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<sup>12</sup>Scaling 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.

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

<sup>14</sup>Plaintiffs 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 board<sup>15</sup>. 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.<sup>16</sup> 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 aggrievement<sup>17</sup> (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

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

<sup>16</sup>By 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.

<sup>17</sup>This 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 me<sup>18</sup>, 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

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<sup>18</sup>But 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 review<sup>19</sup>. 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.<sup>20</sup> 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.

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

<sup>20</sup> 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).<sup>21</sup> 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

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<sup>21</sup>Kuklinska 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.)<sup>22</sup>

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.<sup>23</sup> 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."

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<sup>22</sup>The 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?

<sup>23</sup> 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.

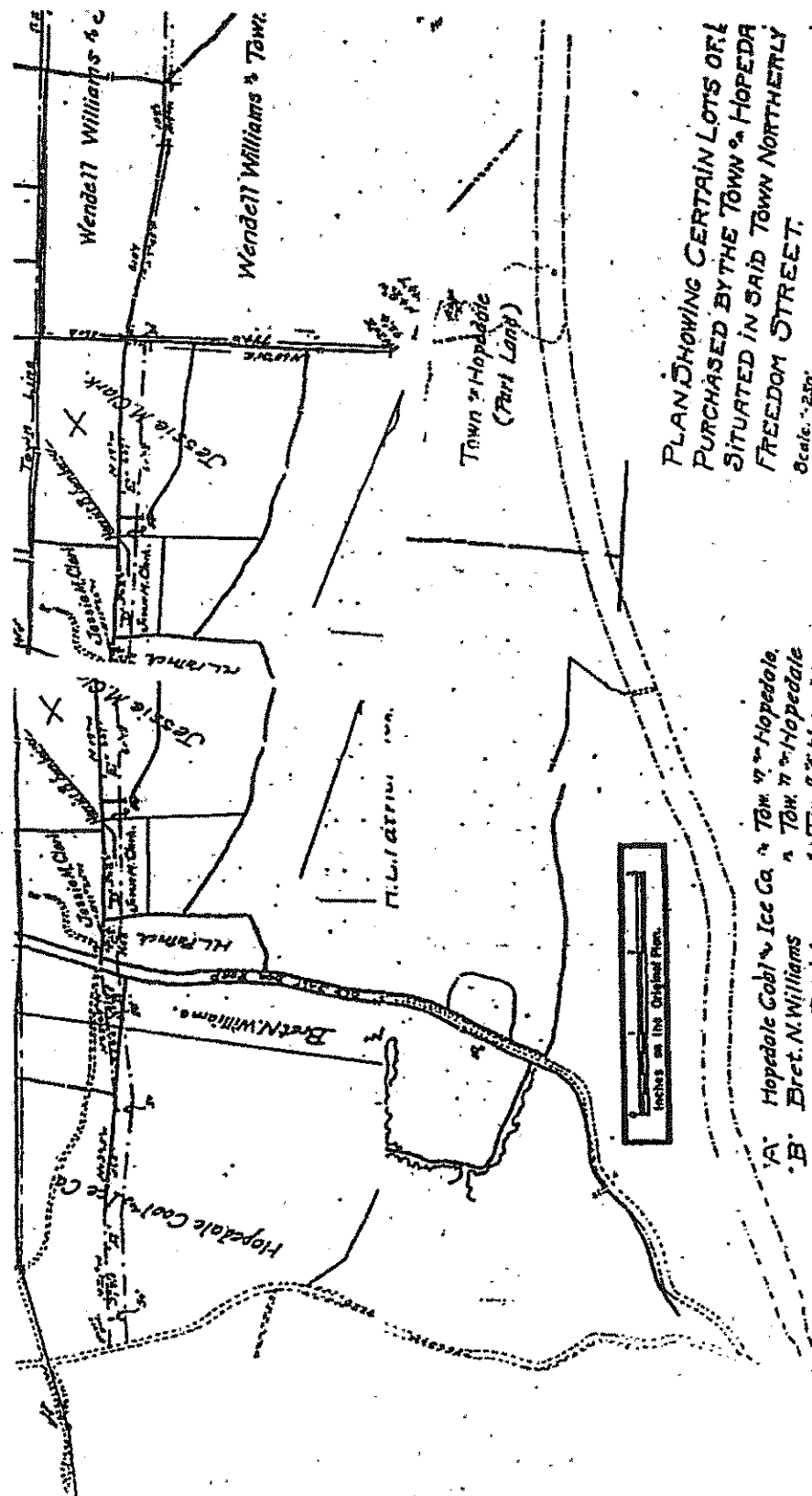
*Peter W. Kilborn*

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Peter W. Kilborn  
Chief Justice

Dated: January 8, 2003





PLAN SHOWING CERTAIN LOTS OF  
 PURCHASED BY THE TOWN OF HOPEDA  
 SITUATED IN SAID TOWN NORTHERLY  
 FREEDOM STREET.  
 Scale: 1/4" = 10'

OCT. 1916.  
 J. G. [Signature]

- A. Hopeda Coal & Ice Co. & Town of Hopeda.
- B. Bret N. Williams & Town of Hopeda.
- C. Henry L. Patrick & Town of Hopeda.
- D. Harriet B. Somborger & Town of Hopeda.
- F. Tessie N. Clark & Town of Hopeda.

**ADDENDUM TO APPLICATION  
FOR APPROVAL OF DEFINITIVE PLAN  
Hopedale Ridge – A Definitive Subdivision Plan**

**Exhibit 2**

# Gould Title Company, Inc.

*Real Estate Title Services*

90 Front Street, Ste C202

Worcester, MA 01608

Tel: (508) 754-1871

Fax: (508) 754-7079

May 18, 2021

Stephan M. Rodolakis, Esq.  
Fletcher Tilton, PC  
370 Main Street, 11<sup>th</sup> Floor  
Worcester, MA 01608

Re: Overdale Parkway, Hopedale, MA

Dear Stephan,

Per your request, I have reviewed the portion of the title work conducted by Attorney Robert C. Strand and the letter produced by Attorney Joseph Antonellis as a result of such title work. I have also reviewed the letter of Attorney Margaret Wittenborg with particular focus on the origins and status of "Overdale Parkway". The above referenced work seems to indicate, and I have been able to verify with the records at the Worcester District Registry of Deeds ("the Registry"), that the Town of Hopedale ("the Town") acquired various fifty (50) foot wide tracts of "Overdale Parkway" from the following parties:

1. Hopedale Coal & Ice Co. see Book 2122, Page 288 ("A" on Plan Book 30, Plan 40)
2. Bret N. Williams see Book 2122, Page 287 ("B" on Plan Book 30, Plan 40)
3. Henry Billings, 2<sup>nd</sup> see Book 2981, Page 19 ("C" on Plan Book 30, Plan 40)
4. Harriet B. Sornborger see Book 2122, Page 288 ("D" on Plan Book 30, Plan 40)
5. Jessie M. Clark see Book 2122, Page 290 ("E" on Plan Book 30, Plan 40)

There is no evidence in the aforementioned deeds, that the tracts were to be used for park purposes. Attorney Strand did not find any evidence in his research through 1988 that the Town recorded dedications of any unpaved portion of "Overdale Parkway" to the Parklands. I carried forth his research from 1989 through to May 12, 2021 and I did not find any conveyances or takings of any portions of "Overdale Parkway" to the Parklands.

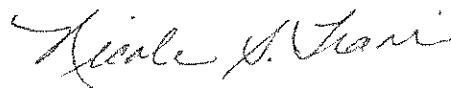
Furthermore, at the time of acquisition of the aforementioned deeds, the Town also acquired a parcel from Wendell Williams as shown on Plan Book 30, Plan 40. This parcel abuts land that was taken by the Town of Hopedale Park Commissioners in Book 1630, Page 11 but it is clearly separate than that land taken by the Park Commission. The land that seems to be dedicated to the Parklands pursuant to said taking is clearly delineated on Plan Book 5, Plan 18 and does not include any portion of "Overdale Parkway" nor does it abut "Overdale Parkway". If the Parklands later acquired the parcel formerly of Wendell Williams that was conveyed to the Town, then it only abuts the northerly end of the unimproved portion of Overdale Parkway; it does not include it.

Page 2

Based on information provided to me, the Town Clerk has no records indicating that "Overdale Parkway" is a public way. However, there are several house lots that were built on Overdale Parkway so it is evident that at least a portion of Overdale Parkway between Freedom Street and Old Salt Box Road is being used as a town way. Furthermore, there are several plans recorded with said Registry by various surveyors that reflect at least portions of Overdale Parkway as public (see Plan Book 501, Plan 21 by Shea Engineering & Surveying Company, Plan Book 699, Plan 35, Plan Book 800, Plan 108, Plan Book 811, Plan 74 by Guerriere & Halnon, Inc. and Plan Book 778, Plan 65 by Land Planning, Inc.). This information is relevant as it supports the claim that the Town acquired the fifty (50) foot tracts to be used as a town way rather than for park purposes.

It is my opinion, based on the expertise of the other attorneys who conducted research along with my supplemental examination of the official 3records at the Registry, that the fifty (50) foot wide tracts shown on Plan Book 30, Plan 40 are Town owned and not owned by the Parklands. The stretch of "Overdale Parkway" owned by the Town which appears to be unimproved is comprised of a portion of Parcel "D" and Parcel "E" on Plan Book 30, Plan 40 and runs along land of Black Brook Realty Corp. on the westerly side and along land of Ricardo Lima on the easterly side for a distance of approximately 700 feet in length (see a true scale copy of said plan included herewith). The records at the Registry seem to indicate that the Town is the lawful owner of the unimproved portions of "Overdale Parkway" which Black Brook and Lima have offered to improve as a gift to the Town.

Very truly yours,



Nicole S. Trani

Enclosures

that is situated in said HOPEDALE and is part of the premises conveyed to me by this grantee by deed dated November 6, 1915 and recorded with Worcester District Deeds, Book 2091, Page 309, Said fifty (50) foot strip is further bounded and described as follows:- Its westerly boundary line begins at the land of this grantee and at the northerly end of the westerly line of the tract conveyed by this grantee to the Town of Hopedale by deed of even date with this deed; thence, runs N. 23° 45' W., about 210 feet to land of Henry L. Patrick at the old Salt Box Road, so called. Said strip, fifty (50) feet in width, lies on the easterly side of the above described line, its southerly end being bounded by said tract conveyed by this grantee to the Town of Hopedale, and its northerly end by said Patrick land at said Salt Box Road.

I, Lola Williams, wife of said grantor release to said grantee all rights of DOWER and HOMESTEAD and other interests therein.

WITNESSES our hands and seals this first day of December, 1916.

Bret N. Williams (seal)  
Lola Williams (seal)

Commonwealth of Massachusetts

Worcester, ss. December 8, 1916. Then personally appeared the above named Bret N. Williams and acknowledged the foregoing instrument to be his free act and deed, before me

Frank J. Dutcher Justice of the Peace

Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

I, Bret N. Williams, of Hopedale, Worcester County, Massachusetts for consideration paid, grant to Town of Hopedale, a municipal corporation in said County, with QUITCLAIM covenants a certain tract of land situated in said HOPEDALE, being a part of the premises conveyed to me by the Hopedale Coal and Ice Company by deed dated November 6, 1915, recorded with Worcester District Deeds, Book 2091, Page 309, said conveyed tract being fifty (50) feet in width, and further bounded and described as follows:- Its westerly boundary line begins at land of the Hopedale Coal and Ice Company, and at the northerly end of the westerly line of the tract conveyed by the Hopedale Coal and Ice Company to the Town of Hopedale, by deed of even date with this deed, and thence runs N. 23° 45' W., about 210 feet to land of Henry L. Patrick, at the old Salt Box Road, so called. Said strip, fifty (50) feet in width, lies on the easterly side of the above-described line, its southerly end being bounded by said tract conveyed by the Hopedale Coal and Ice Company to the Town of Hopedale, and its northerly end by said Patrick land at said Salt Box Road. This conveyance is made subject to a right of way or easement over the granted premises conveyed to said Hopedale Coal and Ice Company by deed of even date herewith; and the grantor hereby reserves for himself, his heirs and assigns, the right to pass and repass over the conveyed tract from his remaining land to and from the old Salt Box Road, so called.

I, Lola Williams, wife of said grantor release to the grantee all rights of DOWER and HOMESTEAD and other interests therein.

WITNESSES our hands and seals this first day of December, 1916.

Bret N. Williams (seal)  
Lola Williams (seal)

Commonwealth of Massachusetts

Worcester, ss. December 8 1916. Then personally appeared the above named Bret N. Williams and acknowledged the foregoing instrument to be his free act and deed, before me

Frank J Dutcher Justice of the Peace

Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

The Hopedale Coal and Ice Company, a duly established corporation with its principal place of business at Hopedale, Worcester County, Massachusetts for consideration paid, grants to Bret N. Williams of said Hopedale, with QUITCLAIM covenants all its interest and title in and to certain land situated in said HOPEDALE, said interest and title being that easement or right of way reserved to the grantor in its deed to this grantee, dated November 6, 1915 and recorded with Worcester District Deeds, Book 2091, Page 309, the reservation in said deed being in the following words:- "Reserving to the grantor, for the benefit of itself, its successors and assigns, a right of way for passing, with teams or otherwise, from said Salt Box Road across the westerly end of the granted premises, where a cart-way now exists, to the grantor's remaining land." For authorizing vote of Directors, see copy of vote recorded with deed from

Williams  
to  
Town of  
Hopedale

Hopedale Coal  
& Ice Co.  
to  
Williams



this grantor to Town of Hopedale, of even date herewith.

I N W I T N E S S W H E R E O F the said Hopedale Coal & Ice Company has caused these presents to be signed and its corporate seal hereto affixed by William H. Barney, its Treasurer, duly authorized, on this first day of December, 1916.

Hopedale Coal & Ice Co. (seal)  
William H. Barney, Treas.

Commonwealth of Massachusetts

Worcester, ss. December 12, 1916. Then personally appeared the above named William H. Barney and acknowledged the foregoing instrument to be the free act and deed of the Hopedale Coal & Ice Company, before me, Wendell Williams Justice of the Peace  
Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

Sornborger  
to  
Clark

I, Harriet B. Sornborger of Hopedale, Worcester County, Massachusetts being unmarried, for consideration paid, grant to Jessie M. Clark of said Hopedale, with W A R R A N T Y covenants the land situated in said HOPEDALE, being a certain tract of wood or sprout land situated a little north of the old Salt Box Road, so-called, and being that portion of the land described in the deed of Jessie M. Clark to me, dated May 7, 1910, and recorded with Worcester District Deeds, Book 1932, Page 231, that remains after the conveyance of a portion of said tract by me to the Town of Hopedale by deed of even date herewith. The conveyed tract may be further bounded and described as follows:- Bounded westerly by land this day conveyed by me to the Town of Hopedale about three hundred two feet; northerly by land of this grantee about ninety-four feet; easterly by land of this grantee about three hundred two feet; southerly by land of Henry L. Patrick, at a wall, about ninety-four feet.  
W I T N E S S my hand and seal this 27th day of October, 1916.

Harriet B. Sornborger (seal)

Commonwealth of Massachusetts

Worcester, ss. October 27 1916. Then personally appeared the above named Harriet B. Sornborger and acknowledged the foregoing instrument to be her free act and deed, before me

Frank J Dutcher Justice of the Peace

Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

Sornborger  
to  
Town of  
Hopedale  
See Plan Book 30,  
Plan 40.

I, Harriet B. Sornborger of Hopedale, Worcester County, Massachusetts being unmarried, for consideration paid, grant to the Town of Hopedale, a municipal corporation, located in said County, with W A R R A N T Y covenants the land in said HOPEDALE, being a certain tract of wood or sprout land situated a little north of the old Salt Box Road, so-called, and being a strip fifty feet in width, extending along the westerly boundary of that tract of land conveyed to me in the deed of Jessie M. Clark, dated May 7, 1910, and recorded with Worcester District Deeds, Book 1932, Page 231. Said tract may be further bounded and described as follows:- Being bounded westerly about three hundred two feet by a wall and land of Jessie M. Clark; northerly fifty feet by land of said Clark; easterly about three hundred two feet by a line fifty feet from and parallel to the wall constituting the first above described boundary (said line separating the conveyed tract from that conveyed by me this day to Jessie M. Clark); southerly about fifty feet by a wall at land of Henry L. Patrick. Said tract appears on a plan to be filed with Worcester District Registry of Deeds, made by G. C. Eastman, C. E., dated October 1916, and marked, "Plan showing certain lots of land purchased by the Town of Hopedale, situated in said Town northerly of Freedom Street."  
W I T N E S S my hand and seal this 27th day of October, 1916.

Harriet B. Sornborger (seal)

Commonwealth of Massachusetts

Worcester, ss. October 27 1916. Then personally appeared the above named Harriet B. Sornborger, and acknowledged the foregoing instrument to be her free act and deed, before me

Frank J. Dutcher Justice of the Peace

Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

Hopedale Coal  
& Ice Co.  
to  
Town of Hopedale

The Hopedale Coal and Ice Company, a duly established corporation with its principal place of business at Hopedale, Worcester County, Massachusetts for consideration paid, grants to the Town of Hopedale, a

municipal corporation in said County, with Q U I T C I A I M covenants the land situated on the northerly side of Freedom Street, in said HOPE-DALE, that is bounded as follows:- Beginning at a stone street bound in the northerly line of said street; thence, running N. 21° W., 379.1 feet; thence, N. 13° 15' W., 365 feet; thence, N. 23° 45' W., 226 feet, more or less, to land of Bret N. Williams, said lines all bounding on grantor's other land, and part of the way running with a stone wall. The conveyed tract is fifty (50) feet in width and lies on the easterly side of the above described lines, the southerly end of said strip, fifty (50) feet in width, being bounded by said Freedom Street, and the northerly end by land of said Bret N. Williams. The conveyed premises are a part of the third tract described in the deed of George A. Draper et al. to the grantor, dated July 19, 1907 and recorded with Worcester District Deeds, Book 1861, Page 231, and are shown on a plan to be recorded with this instrument marked "Plan showing certain lots of land purchased by the Town of Hopedale, situated in said Town northerly of Freedom Street", made by G. C. Eastman, C. E., dated October, 1916. The grantor hereby reserves for itself, its successors and assigns, the right to pass and repass from its remaining land over the conveyed tract to and from the old Salt Box Road, so called, and said Freedom Street.

I N W I T N E S S W H E R E O F the said Hopedale Coal & Ice Company has caused these presents to be signed and its corporate seal hereto affixed by William H. Barney, its Treasurer, duly authorized, on this first day of December, 1916.

See Plan Book 30,  
Plan 40.

Hopedale Coal & Ice Co. (seal)  
William H. Barney, Treas.  
Commonwealth of Massachusetts  
Worcester, ss. December 12 1916. Then personally appeared the above named William H. Barney and acknowledged the foregoing instrument to be the free act and deed of the Hopedale Coal & Ice Company, before me,  
Wendell Williams Justice of the Peace  
(Copy of Vote.)

"Upon motion duly made and seconded it was unanimously V O T E D that the Treasurer be, and hereby is authorized to make sale and due conveyance, upon such terms and conditions as he shall deem wise, to the Town of Hopedale, of a tract of land about fifty feet in width, extending across the Inman Woodlot, so-called, in Hopedale, Mass., from Freedom Street to land of Bret N. Williams; and also that the said Treasurer be and hereby is authorized to execute and deliver to the said Bret N. Williams a release of the right of way reserved in the deed to him of a portion of said Inman lot that is dated November 6, 1915, and recorded with Worcester District Deeds, Book 2091, Page 309."

I hereby certify that the foregoing is a true copy from the Clerk's records of a vote passed at a duly held meeting of the Directors of the Hopedale Coal and Ice Company, on December 9, 1916.

William H. Barney  
Clerk of Hopedale Coal and Ice Company.

December 9, 1916.  
Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

I, Wendell Williams, of Milford, Worcester County, Massachusetts for consideration paid, grant to Jessie M. Clark of Hopedale, in said County, with Q U I T C I A I M covenants a certain tract of land situated in said HOPEDALE, bounded as follows: Beginning at a Town bound between the Towns of Hopedale and Mendon, at land of Cordelia W. Thurston (now deceased) and Eliza W. Wood; thence running with said Thurston and Wood land, N. 69 1/2° E., with a wall, about 360 feet to a bound at land this day conveyed by this grantor to the Town of Hopedale; thence with said conveyed land, S. 20° 15' E., 932.3 feet, S. 19° E. 189 feet, S. 9° 45' E., 618.7 feet, the last two lines running with a stone wall to the northerly end of the westerly line of land this day conveyed by Jessie M. Clark to said Town of Hopedale; thence westerly with a wall and land of this grantee, about 260 feet to said Town line and land of F. S. Clark; thence N. 25° W., with said Town line and Clark land, about 1765.5 feet to the point of beginning. The conveyed tracts appears on a plan to be recorded with Worcester District Deeds, marked, "Plan showing certain lots of land purchased by the Town of Hopedale, situated in said Town northerly of Freedom Street", made by G. C. Eastman, C. E., dated Oct. 1916, and is a part of premises conveyed to me by deed of Thomas J. Lapham, dated October 20, 1914, and recorded with Worcester District Deeds, Book 2066, Page 335.

Williams  
to  
Clark

I, Sylvia H. Williams, wife of said grantor release to said grantee all rights of D O W E R and H O M E S T E A D and other interests therein.

W I T N E S S our hands and seals this first day of December, 1916.

Wendell Williams (seal)

Sylvia H. Williams (seal)

Commonwealth of Massachusetts

Worcester, ss. January 4, 1917. Then personally appeared the above named Wendell Williams and acknowledged the foregoing instrument to be his free act and deed, before me

Dana Osgood Notary Public

Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

Clark  
to  
Town of Hopedale  
See Plan Book 30  
Plan 40.

I, Jessie M. Clark, of Hopedale, Worcester County, Massachusetts for consideration paid, grant to Town of Hopedale, a municipal corporation in said County, with Q U I T C L A I M covenants a certain tract of land situated in said HOPEDALE, being a part of the premises conveyed to me by Thomas J. Lapham by deed dated April 14, 1910 and recorded with Worcester District Deeds, Book 1930, Page 217, said tract being substantially fifty (50) feet in width, and lying on the easterly side of a westerly boundary line that is marked by a stone wall separating other land of the grantor, the southerly end of said tract being bounded by that tract of land, fifty (50) feet in width, conveyed by Harriet B. Sornborger to the Town of Hopedale by deed dated October 27, 1916 and to be recorded with Worcester District Deeds, and its northerly end being bounded by a stone wall at land this day conveyed by Wendell Williams to said Town of Hopedale. The conveyed tract is that shown on a plan to be filed with said Worcester District Deeds marked "Plan showing certain lots of land purchased by the Town of Hopedale situated in said Town northerly of Freedom Street", made by G. C. Eastman, C. E., dated October, 1916. The grantor hereby reserves for herself, her heirs and assigns, the right to pass and repass from her remaining land over and across the conveyed tract.

I, Frank S. Clark, husband of said grantor release to said grantee all rights of or to an estate by the C U R T E S Y and other interests therein.

W I T N E S S our hands and seals this first day of December, 1916.

Jessie M. Clark (seal)  
Frank S. Clark (seal)

Commonwealth of Massachusetts

Worcester, ss. December 7, 1916. Then personally appeared the above named Jessie M. Clark and acknowledged the foregoing instrument to be her free act and deed, before me

Frank J. Dutcher Justice of the Peace

Rec'd Jan. 6, 1917 at 8h. 30m. A. M. Ent'd & Ex'd.

\* \* \* \* \*

Williams  
to  
Town of Hopedale  
See Plan Book 30,  
Plan 40.

I, Wendell Williams, of Milford, Worcester County, Massachusetts for consideration paid, grant to Town of Hopedale, a municipal corporation in said County, with Q U I T C L A I M covenants a certain tract of land situated in said HOPEDALE, bounded as follows: Beginning at a point which is the northerly end of the westerly line of land this day conveyed by Jessie M. Clark to said Town of Hopedale, and at a corner of walls; thence with land conveyed by this grantor to Jessie M. Clark, by deed of even date herewith, N. 9° 45' W. about 618.7 feet, N. 19° W. about 189.1 feet, and N. 20° 15' W. about 932.3 feet to a stone wall at land of Cordelia W. Thurston. (now deceased) and Eliza W. Wood; thence N. 69 1/2° E. with said Thurston and Wood land, about 742.2 feet to a corner of walls at Park land of the Town of Hopedale; thence with a wall and said Park land, S. 26° E. about 516.8 feet, N. 71° E. about 115.5 feet, S. 42 5/12° E. about 110.2 feet, S. 20 1/4° E. about 790 feet, S. 4 5/12° E. about 194.7 feet, and S. 20° W. about 92.4 feet; thence continuing with said Park land and land of Jessie M. Clark, S. 68° 30' W. about 794 feet to the point of beginning. Said tract appears on a plan to be recorded with Worcester District Deeds, marked, "Plan showing certain lots of land purchased by the Town of Hopedale, situated in said Town northerly of Freedom Street", made by G. C. Eastman, C. E., dated Oct. 1916, and is a part of the premises conveyed to me by deed of Thomas J. Lapham, dated October 20, 1914, and recorded with Worcester District Deeds, Book 2066, Page 335.

I, Sylvia H. Williams, wife of said grantor release to said grantee all rights of D O W E R and H O M E S T E A D and other interests therein.

W I T N E S S our hands and seals this first day of December, 1916.

Wendell Williams (seal)  
Sylvia H. Williams (seal)

Commonwealth of Massachusetts

Worcester, ss. January 4, 1917. Then personally appeared the above named Wendell Williams and acknowledged the foregoing instrument to be his free

I. Henry Billings, 2nd  
 of Hopedale Worcester County, Massachusetts  
~~XXXXXX~~ for consideration paid, grant to The Town of Hopedale  
 of Worcester County, Commonwealth of Massachusetts with warranty covenants

~~XXXXXX~~ A certain parcel of land located in the southwesterly portion  
 of said Hopedale and more particularly bounded and described as follows:  
(Description and encumbrances, if any)

Beginning at the southwesterly corner of land now of Oscar Williams; thence running with a wall and said Williams land n. 73° 02' E. 81.91 feet; thence running still with said wall and said Williams land N.80° 36' E. 104.51 feet; thence running northeasterly with a wall and by land of said Williams and Jessie M. Clark about 370 feet to a point; thence running northerly still with land of said Clark about 595 feet to the northeasterly corner of said Clark land and land of the Town of Hopedale; thence running easterly with said Town of Hopedale land about 246 feet to a corner; thence still running with said Town of Hopedale land about 93 feet to a corner of walls at said Town of Hopedale land; thence running easterly with said wall and said Town of Hopedale land to the westerly line of land of the Grafton and Upton Railroad Company; thence running southerly with said Grafton and Upton Railroad Company land to other land of the Town of Hopedale; thence running with said other land of the Town of Hopedale and a stone wall to Old Salt Box Road; thence running westerly with said Salt Box Road to the intersection of said Salt Box Road with the easterly line of Overdale Parkway; thence running northerly with said Overdale Parkway to the point of beginning.

Meaning and intending to convey and hereby conveying all of the land on the northerly side of Old Salt Box Road which was conveyed to me by deed of Cora Cushman dated May 1, 1945 and recorded with Worcester District Registry of Deeds.

I. Marian M. Billings ~~husband~~ wife of said grantor,

release to said grantee all rights of ~~curtesy~~ dower and homestead and other interests therein.

Witness our hands and seals this 1st day of May 1945

*Henry Billings* *Marian M. Billings*

The Commonwealth of Massachusetts

Worcester County ss. May 1 1945

Then personally appeared the above named Henry Billings, 2nd, and Marian M. Billings

and acknowledged the foregoing instrument to be their free act and deed, before me

The foregoing deed is without monetary consideration, no stamps required.

*Charles A. Foutte*  
 Notary Public in and for the State of Massachusetts  
 My commission expires March 26, 1948

Rec'd Dec. 20, 1945 at 3h. 17m. P. M. Ent'd & Ex'd.

Word one thousand eight hundred and ninety-nine  
 signed, sealed and delivered } Willis F. Phelps seal,  
 in presence of } Ella C. Phelps seal,  
 Boundery changed from 15 } Worcester, ss. September 8<sup>th</sup>.  
 to 20 feet before execution } 1899, Then personally appeared  
 J. B. Nelson — } the above named Willis F.  
 Phelps and acknowledged the foregoing instrument  
 to be his free act and deed,

Before me Willis C. Sibley Justice of the Peace.  
 Recd Sept. 8<sup>th</sup> 1899 at 10<sup>th</sup> 10<sup>th</sup> A.M. Court of Esq. City *Harry B. Milder Reg*

Patrick Henry &c.  
 to  
 Town of Hopedale;  
 Taking of land;  
 1895-1896

Description of lands belonging to  
 Henry D. Patrick  
 Draper company  
 Geo. A. Draper  
 John B. Henry  
 John S. Mead  
 Edwin C. Taft  
 Heirs of Barra V. Sadler  
 Joseph C. Bancroft  
 William F. Draper and others  
 Town of Hopedale.

Taken by Town of Hopedale for park purposes July 21, 1890  
 First; A certain tract of land lying on the northern  
 side of Freedom Street, and easterly of Dutcher Street,  
 bounded and described as follows, viz; Beginning  
 at the southwesterly corner of the premises at the juncti-  
 on of said streets; thence north  $20^{\circ} 50'$  West 602.08 feet  
 along the East side of Dutcher Street to a stake at the  
 junction of Dutcher and Northrop Streets; thence north  
 $69^{\circ} 23'$  East 549.85 feet along the South side of Northrop  
 Street and continuing in same course to a stone wall  
 thence following said stone wall South  $17^{\circ} 46'$  East  
 69.7 feet; thence continuing along stone wall South  
 $21^{\circ} 55'$  East 133.0 feet; thence continuing along stone  
 wall South  $15^{\circ} 10'$  East 95.0 feet; thence along line of  
 fence South  $69^{\circ} 18'$  West 99.24 feet to corner post; thence  
 turning and running South  $35^{\circ} 15'$  East 133.82 feet to  
 corner post; thence South  $69^{\circ} 14'$  West 170.18 feet to corner  
 post; thence South  $20^{\circ} 51'$  East along line of fence 178

feet to stone bound on north side of Freedom Street; thence turning and running South  $68^{\circ} 50'$  West along north line of Freedom Street 304.95 feet to point of beginning, containing ~~622~~ acres now owned by Henry S. Patrick and we have estimated and determined the damages to be \$4000.00. Second; A certain tract of land situated northerly of Freedom Street and Westerly of Dutcher Street, bounded and described as follows, viz; Beginning at a stake on the Easterly edge of the Upper Mill Pond at high water mark on land of the Draper Company; thence north  $79^{\circ} 4'$  East 102.46 feet to a stone bound; thence north  $0^{\circ} 52'$  East 213.96 feet to a stake; thence South  $88^{\circ} 15'$  East 149.71 feet to a stake; thence north  $20^{\circ} 45'$  West 162.89 feet to a stake; thence north  $69^{\circ} 15'$  East 100 feet to Dutcher Street; thence north  $20^{\circ} 50'$  West on said Street 213.62 feet to a stake; thence South  $69^{\circ} 15'$  West 80 feet to a stake; thence north  $20^{\circ} 45'$  West 475 feet to a stake; thence north  $43^{\circ} 21'$  West 587.28 feet to an angle in a wall; thence north  $15^{\circ} 25'$  West 560.12 feet to a stake; thence north  $20^{\circ} 50'$  West 360.3 feet to a stake; thence north  $69^{\circ} 23'$  East 256 feet to a stake at Dutcher Street; thence north  $20^{\circ} 50'$  West on said Street 225 feet to a stake; thence South  $69^{\circ} 23'$  West at right angles with Dutcher Street 256 feet to a stake; thence north  $64^{\circ} 50'$  West 554 feet to a stake; thence north  $31^{\circ} 43'$  West 1640.45 feet to a stake; thence North  $1^{\circ} 30'$  West 1273.65 feet to a stake; thence North  $20^{\circ} 47'$  East, 487 feet to a stake on southerly line of Hazel Street; thence Westerly along southerly line of Hazel Street 328 feet to stone wall; thence along stone wall South  $50^{\circ}$  West 54.8 feet; thence along stone wall South  $25^{\circ} 36'$  East 205.22 feet to line of fence; thence South  $70^{\circ} 27'$  West along fence 825 feet; thence continuing along fence line South  $48^{\circ} 18'$  West 160 feet to a stake on edge of stream; thence South  $71^{\circ}$  West across stream and continuing 32.7 feet to a stake in old oak stump; thence South  $80^{\circ} 25'$  West 485 feet to a stake in stone;

thence South  $16^{\circ} 15'$  East 545 feet to stake in stones; thence South  $69^{\circ} 10'$  West 290.8 feet to stake in stones; thence along line of wall North  $46^{\circ} 6'$  West 260.9 feet to stake in stones; thence South  $82^{\circ} 20'$  West 621 feet to stone wall; thence South  $23^{\circ} 15'$  East along said wall 610.2 feet; thence North  $73^{\circ} 48'$  East along wall 115 feet; thence South  $40^{\circ} 40'$  East along wall 109.7; thence South  $17^{\circ}$  East along wall 202.5 feet; thence continuing along wall South  $17^{\circ} 35'$  East 430 feet; thence continuing along wall South  $17^{\circ} 15'$  East 168.5 feet; thence continuing along wall South  $1^{\circ} 50'$  East 190 feet; thence North  $67^{\circ}$  East 712 feet to Easterly line of location of Drafton + Upton Railway Company; thence South-easterly along said Easterly line of Drafton + Upton Railway Company location 1960 feet to a stake; thence South  $73^{\circ} 50'$  East 888.4 feet to a stake on the Westerly edge of said Upper Pond at high water mark on land of William F. Draper et. al; thence Northerly, following the edge of said pond at high water mark about 500 feet to a stake; thence North  $14^{\circ} 10'$  East 340. — across said pond to a stake on Easterly edge of said pond at high water mark on land of Geo. A. Draper; thence southeasterly and following the edge of the pond at high water mark by various courses about 4000 feet to the place of beginning, containing about 187 acres, about 57 of which are covered by the pond. All rights of flowage owned or exercised by the Draper Company in or over the above described tract, also all lands belonging to said Draper Company which are flowed by the water in said pond when the water is at high water mark, are exempted from this taking. The above tract is owned by the following named parties and we have estimated and determined the damages as follows, viz:

Drafter Company	29.45 acres	\$ 475.00
Henry S. Patrick	11.43 acres	\$ 900.00
George A. Draper	42.87 acres	\$ 2,143.00
John S. Henry	3. acres	\$ 150.00
John S. Mead	3.14 acres	\$ 157.00

Edwin B. Taft	1.84 acre	\$ 92.00
Heirs of Barra V. Sadler	7.32 acre	\$ 350.00
Joseph B. Bancroft	23.49 acre	\$ 500.00
William F. Draper and others	1. acre	\$ 50.00
Town of Hopedale	6.9 acre	no damage
Total,	130.44	\$ 4,817.00

Third: A certain tract of land in the Upper Mill Pond, it being a small island in the southwesterly part of said pond as now flowed by the Draper Company, bounded by the edge of said pond when flowed to high water mark, containing about one half an acre. The above tract is now owned by the Draper Company and we have estimated and determined the damages to be \$ 25.00. All of the above tracts are shown on plan, drawn by Gordon H. Taylor, Civil Engineer, dated July 11, 1899 and filed herewith.

Charles F. Roper  
 Frank J. Dutcher  
 George Otis Draper } Park Commissioners

A true copy of the description taken from the records.  
 David A. Westcott Town Clerk

Rec'd Sept. 8 1899 at 10<sup>20</sup> 15<sup>00</sup> A.M. Ent'd + Ex'd By *Curry B. Miller Reg*

Thompson George H. Know all men by these presents that  
 to George H. Thompson of New Braintree in the  
 William Hamilton } County of Worcester and State of Massachusetts  
 in consideration of One Hundred and Fifty Dollars paid by William Hamilton of said New Braintree in said County of Worcester and State of Massachusetts the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said William Hamilton  
 A certain tract of land situated about one fourth of a mile south of the center of New Braintree on the road leading from New Braintree to West Brookfield containing one and three quarters acres more or less, bounded and described as follows:  
 On the East by land of William Hamilton and the above mentioned road leading from New

(Stamp  
 .50  
 cancelled)



# HOPEDALE PARK COMMISSION.

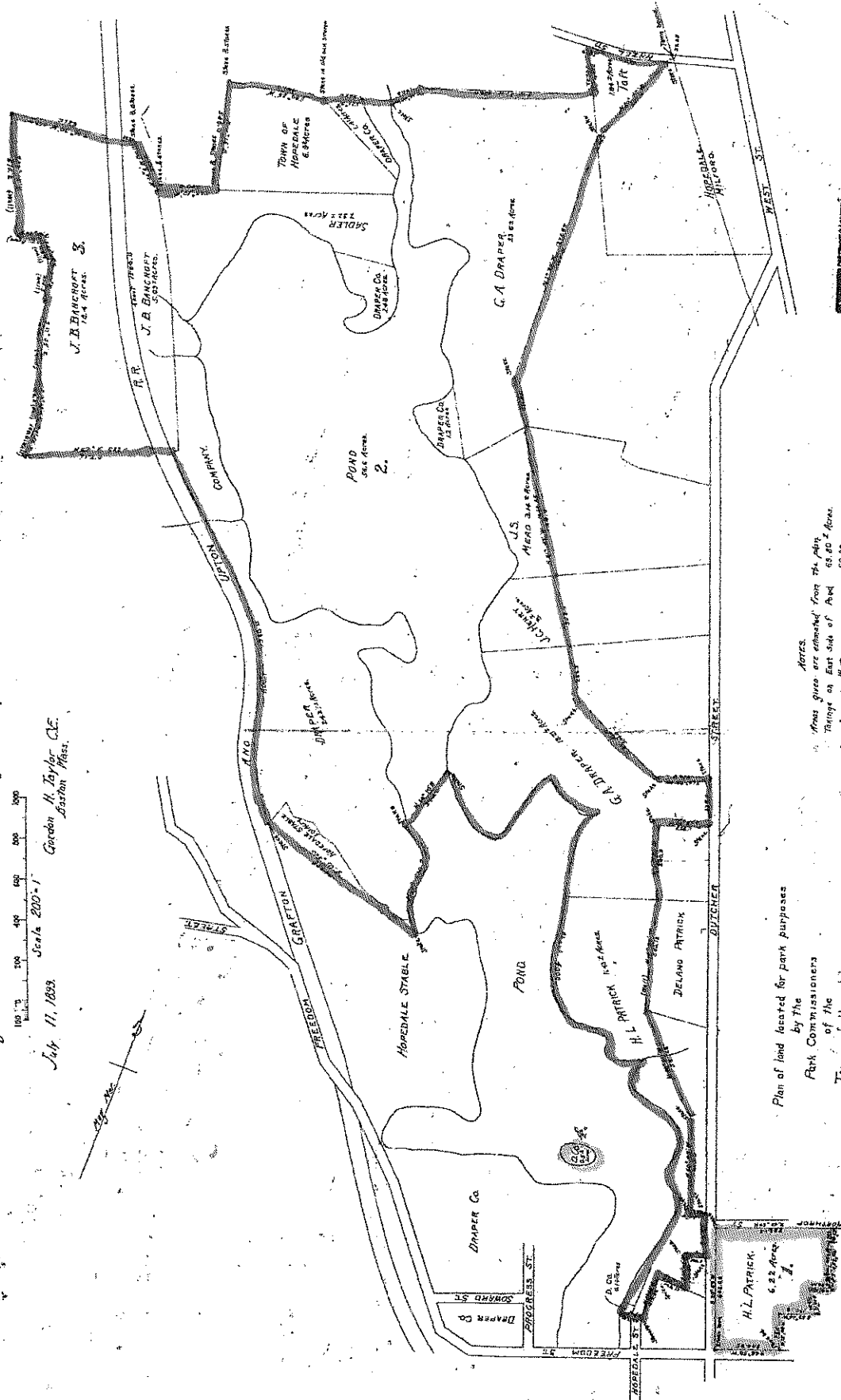
HOPEDALE MASS.

Plan showing boundaries of Proposed Tenkys abbit pond.

Scale 200' = 1"

July 17, 1889.

George H. Taylor C.E.  
Boston Mass.



Plan of land leased for park purposes

By the

Park Commissioners

of the

Town of Hopedale

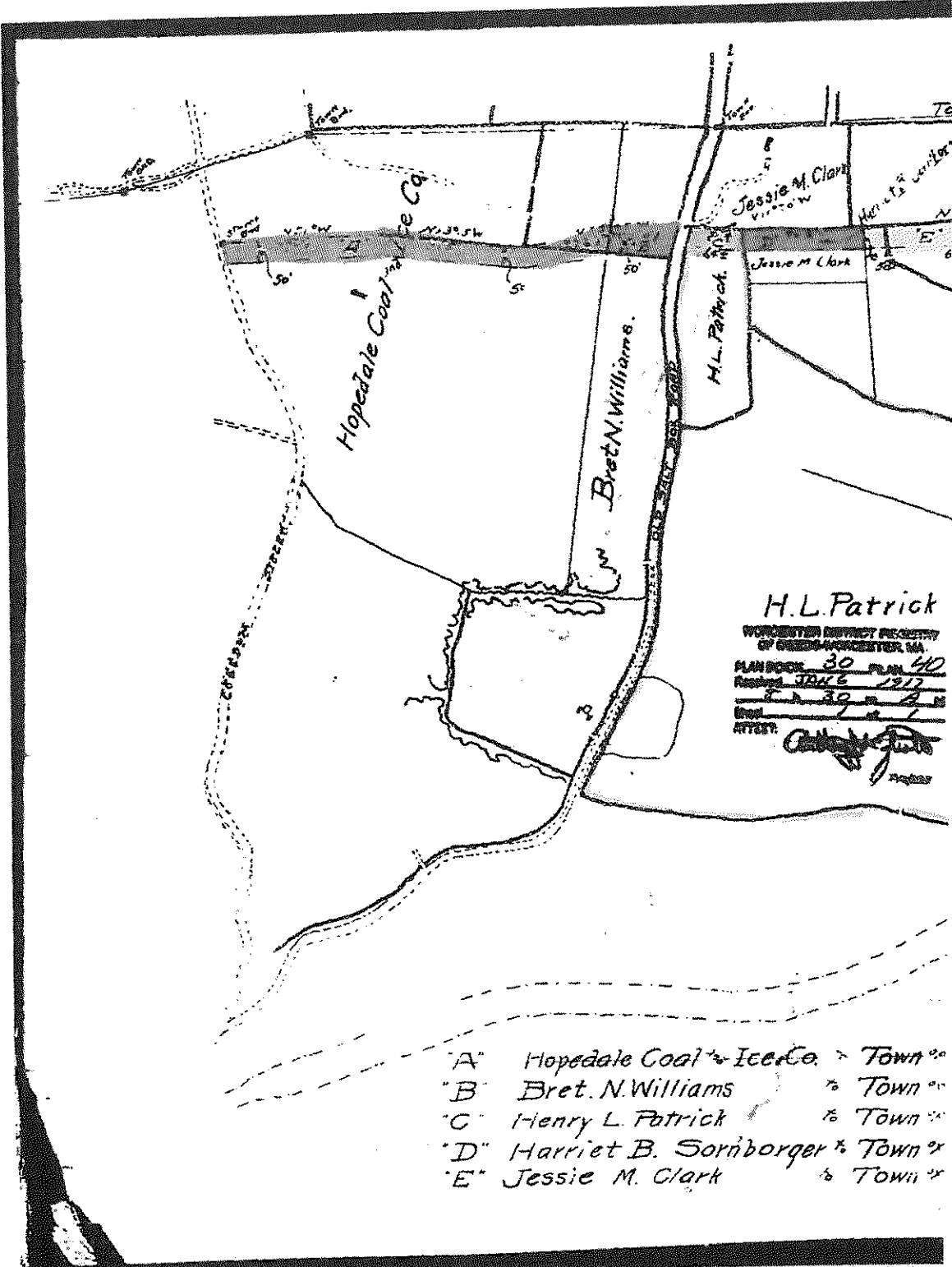
July 13 1889

Charles F. Blyden }  
George W. Blyden }  
George W. Blyden }  
George W. Blyden }

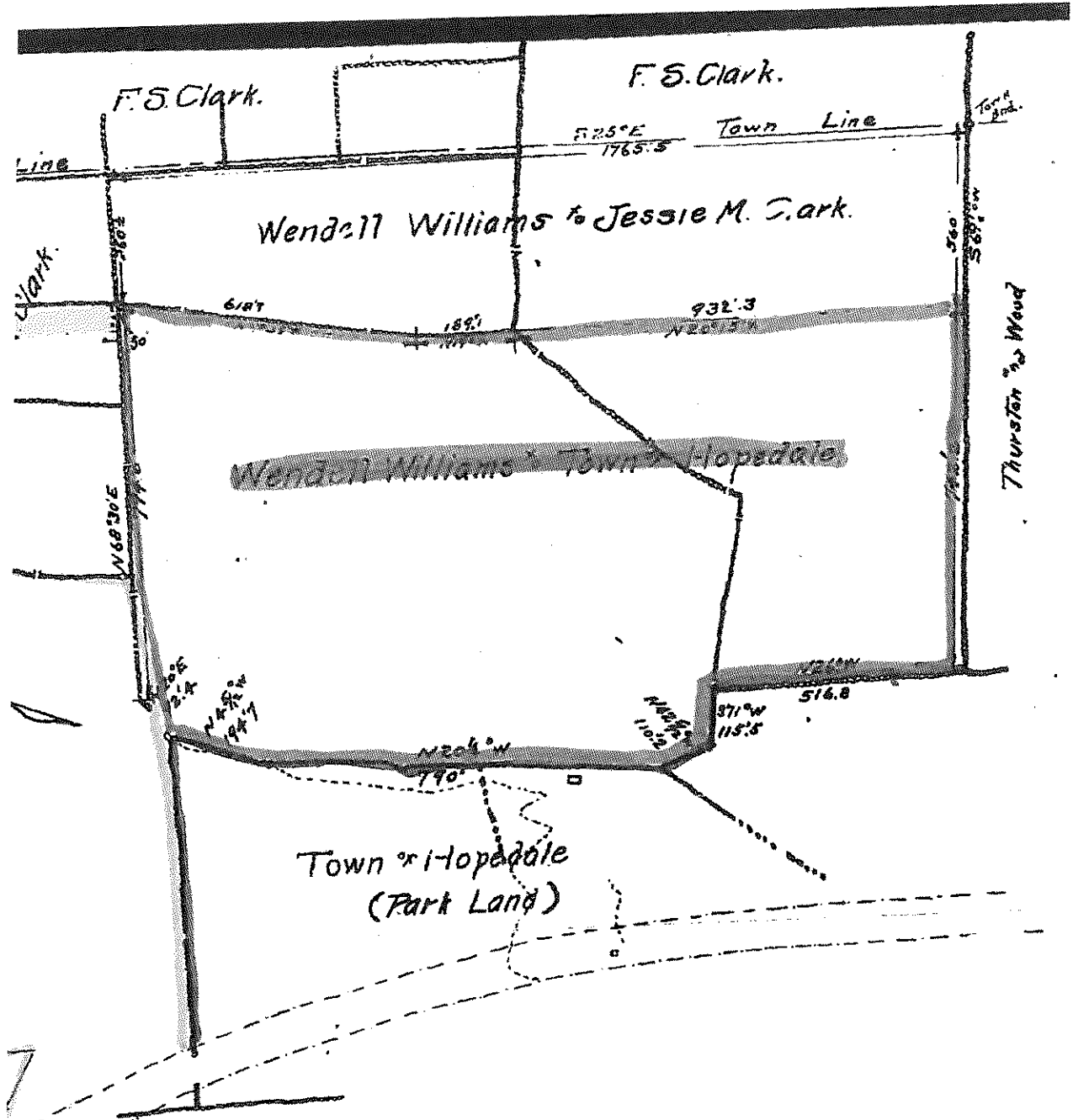
Received of the Town of Hopedale  
the sum of \$100.00  
for the purchase of the land  
shown on the plan above  
this 17th day of July 1889  
By George W. Blyden  
Town Clerk

Acres  
Mass given are estimated from the plan  
Tenkys on East side of Pond 1 63.20  
on West side of Pond 1 66.08  
on Pond 2 8.70  
1877

RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE TOWN OF HOPEDALE MASS. JULY 17 1889  
JAMES S. BLYDEN  
TOWN CLERK



- "A" Hopedale Coal & Ice Co. 1/2 Town 20
- "B" Bret. N. Williams 1/2 Town 20
- "C" Henry L. Patrick 1/2 Town 20
- "D" Harriet B. Sorriborger 1/2 Town 20
- "E" Jessie M. Clark 1/2 Town 20



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

Hopedale  
Hopedale

Scale 1" = 250'

J. C. Eastman C

OCT. 1916.





**ADDENDUM TO APPLICATION  
FOR APPROVAL OF DEFINITIVE PLAN  
Hopedale Ridge – A Definitive Subdivision Plan**

**Exhibit 3**

61 Mass.App.Ct. 308  
Appeals Court of Massachusetts,  
Suffolk.

Lynn H. PARKER & others<sup>1</sup>  
v.  
BLACK BROOK REALTY CORPORATION.

No. 03-P-354.

|  
Argued Feb. 11, 2004.

|  
Decided June 9, 2004.

**Synopsis**

**Background:** Abutting landowners sought judicial review of town planning boards' approvals of definitive subdivision plan for land located partly in each of the two towns. The Land Court Department, Suffolk County, Peter W. Kilborn, J., annulled the approvals. Subdivision applicant appealed.

The Appeals Court, Mills, J., held that general purposes clause of subdivision control statute provided authority for town planning boards and Land Court Department to consider subdivision applicant's lack of legal right to use adjacent way as necessary component for access to public way.

Land Court Department affirmed.

**Attorneys and Law Firms**

**\*\*1087 \*308** John D. Powers, Milford, for the defendant.

Mark S. Bourbeau, Boston, for the plaintiffs.

Present: DOERFER, COHEN, & MILLS, JJ.

**Opinion**

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 \*309 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, 671 N.E.2d 1233 (1996) (*Beale*), is an exception to *Castle Estates, Inc. v. Park & Planning Bd. of Medfield*, 344 Mass. 329, 334, 182 N.E.2d 540 (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, 182 N.E.2d 540. The court said that "[w]ithout such \*310 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, 671 N.E.2d 1233. 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



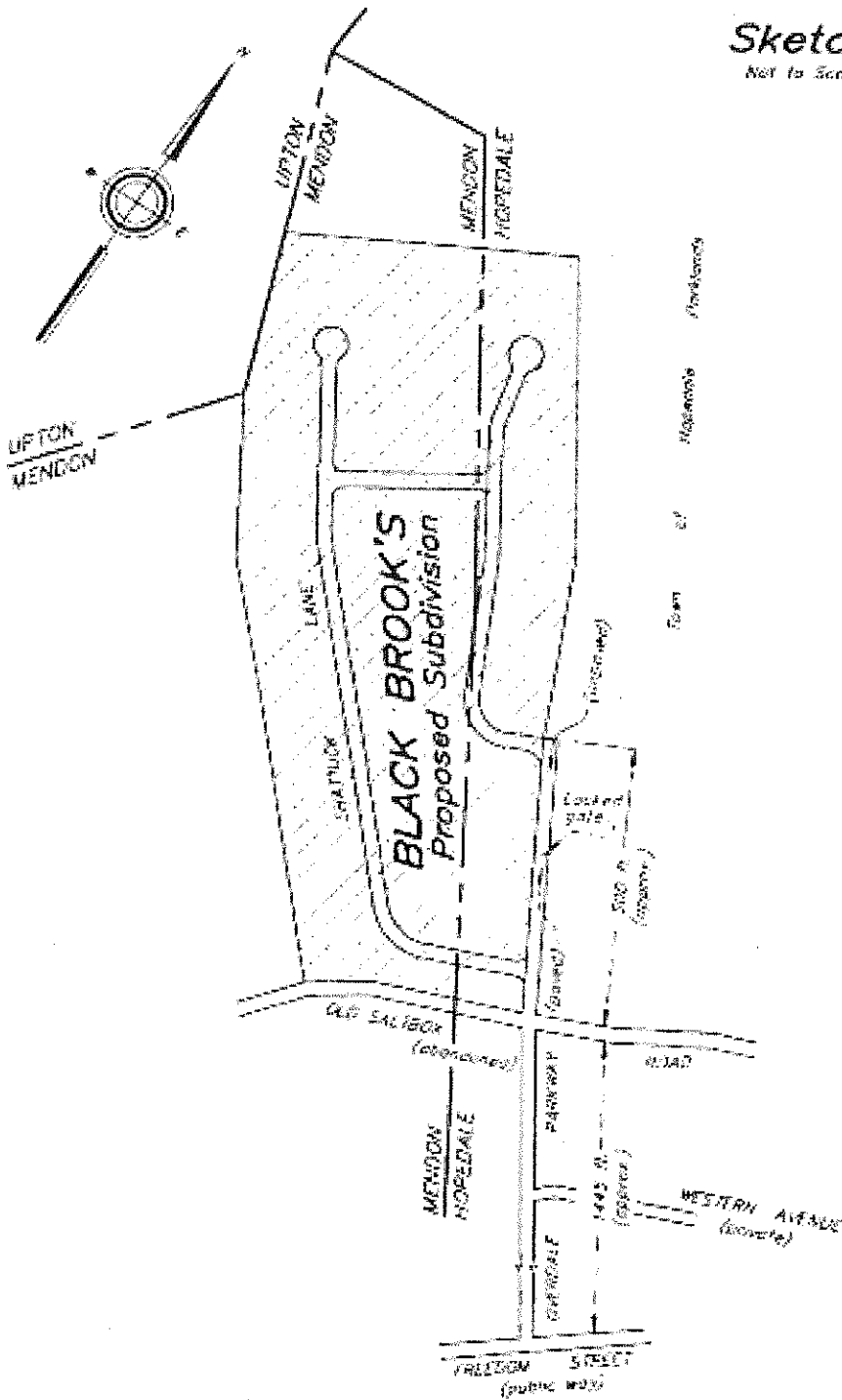
the zoning by-law. *Id.* at 693–697, 671 N.E.2d 1233. Section 81M of G.L. c. 41, as amended by St.1969, c. 884, § 2, expressly admonishes planning boards to exercise their powers under the subdivision control law “with due regard for the provision of adequate access to all of the lots in a subdivision 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, 416 N.E.2d 934 (1981), affirmed the authority of a planning board to evaluate the adequacy of ways outside the subdivision, under a properly drawn local subdivision regulation.<sup>2</sup> Black Brook relies upon *Hahn v. Planning Bd. of Stoughton*, 24 Mass.App.Ct. 553, 555–556, 511 N.E.2d 20 (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 \*311 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, 575 N.E.2d 366 (1991). The regulations of the Hopedale and Mendon planning boards have such an express requirement. Ownership of access rights on \*\*1089 which the proposed subdivision depends is no less consequential.

*Judgments affirmed.*

\*312

# APPENDIX

Sketch  
Not to Scale



## All Citations

61 Mass.App.Ct. 308, 809 N.E.2d 1086

## Footnotes

- 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, 416 N.E.2d 934. Here, of course, there is no contention that the parkway is public, and indeed, Black Brook has no legal right to its use.

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End of Document

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**ADDENDUM TO APPLICATION  
FOR APPROVAL OF DEFINITIVE PLAN  
Hopedale Ridge – A Definitive Subdivision Plan**

**Exhibit 4**

# Worcester South District Registry of Deeds Electronically Recorded Document

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## Recording Information

Document Number	: 118770
Document Type	: AGR
Recorded Date	: August 24, 2021
Recorded Time	: 02:19:09 PM
Recorded Book and Page	: 65903 / 351
Number of Pages(including cover sheet)	: 15
Receipt Number	: 1371700
Recording Fee	: \$105.00

Worcester South District Registry of Deeds  
Kathryn A. Toomey, Register  
90 Front St  
Worcester, MA 01608  
(508) 798-7717

## AGREEMENT

This Agreement (the "Agreement") is made and entered into this 9th day of August, 2021 by and between **Black Brook Realty Corp. ("BBR")**, a Massachusetts corporation having a usual place of business at 17 Main Street, Hopkinton, Massachusetts 01748 and **Ricardo Lima**, an individual with an address of 3 Whitney Road, Hopedale, Massachusetts 01747 ("Lima" together with BBR sometimes collectively referred to as the "Landowners"), on the one hand, and the **Town of Hopedale**, a municipality with town offices located at 78 Hopedale Street, Hopedale, Massachusetts 01747 (the "Town"), on the other hand.

WHEREAS, on June 24, 1985, at a Special Town Meeting of the Town, Warrant Article 7 (the "Warrant Article") was passed relative to a Town owned strip of land approximately thirty (30') feet wide and seven hundred and three (703') feet long located at the end of the paved portion of the road known as Overdale Parkway, which terminates at an entrance to the Hopedale Park Lands (hereinafter the "Unimproved Roadway"), which is owned by the Town by a deed dated October 27, 2016 from Harriet B. Sornborger, recorded with the Worcester District Registry of Deeds (the "Registry") at Book 2122, Page 288 and a deed dated December 1, 1916 from Jessie M. Clark recorded with the Registry at Book 2122, Page 290. A true copy of the Warrant Article and related "*Plan of Land, Hopedale, Mass.*" (the "1985 Plan") are attached hereto as Exhibits A-1 and A-2;

WHEREAS, the Warrant Article provided for the acceptance of a "gift" to the Town (the "Gift") from Virginia A. Larkin and Edward Larkin (collectively the "Larkins"), who owned

property abutting the Unimproved Roadway, in the form of their willingness and obligation to improve said unimproved portion of roadway so as to provide access to their land as well as the land on the westerly side (of the Unimproved Roadway) formerly owned by Curville W. Cox and Elizabeth T. Cox (collectively the "Coxes"), among other things;

WHEREAS, BBR and Lima as the respective successors in title to the Coxes and Larkins, (see Registry at Book 21543, Page 65 and at Book 64469, Pages 229 and 232), wish to proceed with the Gift to the Town and, as required by the Warrant Article, have requested that the Town through the Select Board execute this Agreement to indicate its acceptance of said Gift; and

WHEREAS, through this Agreement, the Landowners and the Town wish to proceed with the Gift and further clarify their respective and rights obligations under the Warrant Article.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the other considerations recited herein, all of which are expressly acknowledged to be sufficient and valid, the Parties hereby covenant and agree as follows:

1. Acceptance of the Gift. The Town accepts the Gift and the Parties agree that, except as specifically provided in this Agreement, their respective rights and obligations arising under the terms of the Warrant Article remain in full force and effect, provided, however, nothing herein shall be construed to obligate the Town to maintain the Unimproved Roadway, unless and until it is accepted as a public way.

2. Upgrade of the Unimproved Roadway. The Landowners will upgrade the Unimproved Roadway to current Town subdivision standards in conjunction with a definitive subdivision application, see M.G.L. c. 41, Section 1 et seq. The Town agrees to join in the subdivision application solely as the owner of the Unimproved Roadway, but for no other purpose.

The actual layout of this subdivision shall be substantially similar to what is shown on the 1985 Plan. Given the existing condition of the improved section of Overdale Parkway, the Landowners reserve the right to seek waivers where reasonable from the Town's subdivision rules and regulations. The Landowners will prosecute the subdivision application/plan and, upon approval, the actual construction of the subdivision roadway with reasonable diligence.

3. Parking Spaces for the Hopedale Park Lands. The design and construction of the contemplated subdivision roadway, see Paragraph 2, above, shall provide for four (4) or five (5) parking spaces to the Town, through easement or fee, within the cul-de-sac terminus for members of the public to access the Hopedale Park Lands. The actual location of the foregoing parking spaces is to be determined during the definitive subdivision approval process.

4. House Lot Yield. As provided in the Warrant Article, BBR and Lima will be limited to six (6) and four (4) single family house lots, respectively, from the frontage created through the improvement of the Unimproved Roadway.

5. Costs of Subdivision and House Lots. The Landowners shall be responsible for all the costs and expenses relative to the permitting and construction of the contemplated definitive subdivision roadway as well as for the ten (10) single family house lots that obtain their access therefrom.

6. Deed to Surplus Land/Conservation Restriction. Upon the receipt of final, non-appealable decision(s) on the definitive subdivision application and any related permits or approvals needed for the construction of the subdivision roadway and the houses on the ten (10) single family houses thereon, BBR will deed to (or alternatively, as may be requested by the Town, will impose a conservation restriction in favor of ) the Town or the Hopedale Park Lands Commissioners on the



balance of the land located within the Town's boundaries not reasonably necessary for the construction and prospective homeowner's enjoyment of said six (6) houses thereon. Such deed or conservation restriction shall be in such form as is reasonably acceptable to the Town and its counsel, and shall provide for public access. BBR will take similar action with respect to the balance of its parcel located within the Town of Mendon. As the location of the building envelopes, driveways, Title V systems and wells, among other things, for these six (6) house lots is not yet known, the Parties agree that the location of this land will be determined following the approval and permitting process. Finally, BBR agrees that no building permits for the six (6) house lots on its parcel shall issue until the deed or conservation restriction in favor of the Town or Hopedale Parklands Commissioners is recorded with the Registry.

7. Subdivision Approval. Notwithstanding anything herein to the contrary, the Landowners are obligated to apply for and receive any and all permits and approvals from any Town board or commission for the subdivision having jurisdiction thereover, and nothing herein shall be construed as support for, or against, approval of said subdivision by the Select Board.

8. No Further Lots. In accordance with the terms of the Warrant Article, in the event a Landowner, its heirs, successors or assigns, allows any other lot owner to pass through a lot shown on the 1985 Plan, without authorization of the Hopedale Town Meeting, the rights and easements granted to said Landowner shall be terminated forthwith and shall not be reinstated without Town Meeting approval.

9. Select Board Approval and Recording. This Agreement is subject to approval by the Select Board of the Town at a duly scheduled meeting and shall be of no force or effect unless and until approved. As required by the Warrant Article, the fully executed Agreement and the

exhibits thereto, which signifies the Town's acceptance of the Gift, are to be recorded at the Worcester South Registry of Deeds.

10. Neutral interpretation. The Parties represent that they have had the ability to be fully and competently represented by counsel of their own choosing in the negotiation and drafting of this Agreement. Accordingly, the Parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Agreement. Further, the Parties hereby acknowledge that they have read this entire document, fully understand its terms and effect and that this Agreement is being signed freely by them. Each of the terms of this Agreement are contractual, not a mere recital, and result from negotiation among the Parties hereto.

11. Governing Law. The validity and construction of this Agreement shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions.

12. Binding on Successors. This Agreement shall inure to and be binding upon the Parties hereto and their respective beneficiaries, heirs, successors, assigns, transferees and legal representatives.

13. Counterparts. This Agreement may be executed concurrently in any number of counterparts, each of which shall be deemed to be an original. Such counterparts shall together constitute but one and the same Agreement.

14. Entire Agreement. This Agreement contains the entire agreement among the Parties and supersedes all prior agreements and understandings, oral or written, among the Parties with respect to the subject matter hereof. This Agreement may be amended only by an agreement in

writing signed by the party against whom any waiver, change, amendment, modification or discharge is asserted.

15. Costs. Should either party to this Agreement initiate any suit or take action to protect its rights under or obtain performance of the promises made herein, then the prevailing party to such suit or action shall be entitled to recover its costs and fees, including reasonable attorneys' fees.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have hereby executed this Agreement under seal as of the date first written above.

Black Brook Realty Corp.

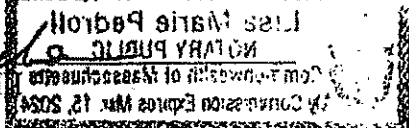
Town of Hopedale

By: [Signature]  
John Burns, its President and Treasurer

[Signature]  
Brian R. Keyes, Chair

[Signature]  
Ricardo Lima

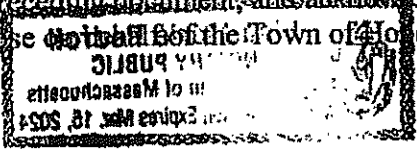
[Signature]  
Louis J. Arcudi, II  
[Signature]  
Glenda A. Hazard



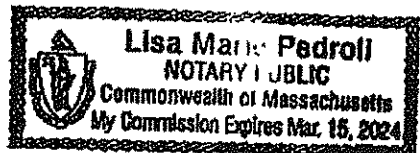
COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 11<sup>th</sup> day of August, 2021, before me, the undersigned notary public, personally appeared Brian R. Keyes & Louis J. Arcudi, II, member of the Hopedale Select Board, as aforesaid, proved to me through satisfactory evidence of identification, which was known & personally, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Hopedale.



Lisa Marie Pedroll  
Notary Public  
My Commission Expires: March 15, 2024



COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 9th day of August, 2021, before me, the undersigned notary public, personally appeared John Burns, President and Treasurer of Black Brook Realty Corp., as aforesaid, proved to me through satisfactory evidence of identification, which was Mass License, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Black Brook Realty Corp.



Lisa Marie Pedroll  
Notary Public  
My Commission Expires March 15 2024

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

On this 9th day of August, 2021, before me, the undersigned notary public, personally appeared Ricardo Lima, as aforesaid, proved to me through satisfactory evidence of identification, which was Mass License, to be the person whose name is signed on the preceding document, and acknowledged to me that he it voluntarily for its stated purpose.

Lisa Marie Pedroll  
Notary Public  
My Commission Expires March 15 2024

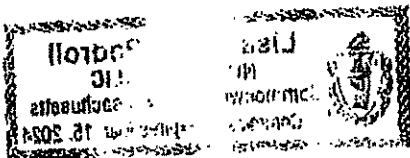


Exhibit A-1

Warrant Article

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 Registrars, 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  
From Principal on Note 377 to Interest on Loan, Overlay Deficit  
From Loan on Overlay Deficit to Interest on Loan, Overlay Deficit  
From Interest on Loan Overlay Deficit to Interest on Municipal Garage  
for a total new balance on Loan Overlay Deficit of.....

From Loan Overlay Deficit 750.74 to Highway Department  
From Board of Health 400.00 to Highway Department  
From Gypsy Moth Control 350.00 to Highway Department  
for a total transfer of.....

From Street Lighting 250.00 to Fire Department  
for a total transfer of .....

From Street Lighting 250.00 to Police Department  
From Historical Commission 100.00 to Police Department  
From Town Insurance 1,900.00 to Police Department  
for a total transfer of .....

From Town Insurance 500.00 to Group Insurance  
for a total transfer of .....

for a grand total of .....  
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 raise and appropriate the following sum of 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 \$6,810 to 88,010 1,200.00  
Total increase of.....  
Street Light Plant 12,600 to 19,200 6,600.00  
Total increase of.....  
Interest on Temporary Loans 20,000 to 23,195 3,195.00  
Total increase of.....  
Amount to be raised.....\$10,995.00,  
by unanimous voice vote.

The Finance Committee recommended favorable action on the following

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

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

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

The Planning Board recommended favorable action on the following Article:

Article 4. Voted that the Town amend the Zoning By-Law of Hopedale by amending the "Town of Hopedale Zoning Map, 1977", by changing the following designated parcels from

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

beginning at a point on the Northernly side of South Main Street, the East of Paul F. and Brenda E. McGonnell, and extending Easterly a distance of 254.00 feet to a point; thence Southerly along property of Robert J. Mallard a distance of 100 feet to a point at Hartford Avenue; thence Westerly along said Hartford Avenue, a distance of 286.50

feet Northerly along South Main Street, a distance of 201 feet to a point of beginning, and containing 56,344 square feet. The parcel containing 56,344 square feet was passed by unanimous voice vote.

*Lisa M. Pedrow*

A true copy, ATTEST  
Town Clerk

Finance Committee and the Planning Board recommended favorable the following Article:

ARTICLE 5. Voted that the Town vote to make the following changes to the Town of Hopedale Zoning By-Laws, as printed in the Special Town Meeting, by standing vote:

From Group Insurance	86,510 to 86,000
For a total increase of	1,200.00
From General Fund	12,500 to 13,300
For a total increase of	6,400.00
From Increase on Temporary Loans	20,800 to 22,175
For a total increase of	3,175.00
Total amount to be raised	\$10,975.00

by unanimous voice vote.

The Finance Committee recommended favorable action on the following Article:

ARTICLE 7. Voted that the town petition the General Court as follows:

Section 1. Notwithstanding the provisions of section thirty-three of Chapter forty-four of the General Laws or any other general law to the contrary, the Town of Hopedale is hereby authorized to credit the proceeds of the sale of the Massachusetts, land and building, to the general fund of the Town of Hopedale, and to use said fund for any purposes for which town funds are authorized to appropriate: funds so may be determined by the voters of Hopedale 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 Hopedale by amending the "Town of Hopedale Zoning Map, dated May 1, 1972", by changing the following designated parcels from 2B to C:

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

beginning at a point on the northerly side of South Main Street, along the easterly side of Brenda L. McCarroll,

THENCE easterly a distance of 254.00 feet to a point;

THENCE southeasterly along the property of Robert J. Mallard a distance of 227.00 feet to a point at Hartford Avenue;

THENCE westerly along said Hartford Avenue, a distance of 254.00 feet;

THENCE northerly along South Main Street, a distance of 201 feet to the point of beginning.

Said parcel containing 55,144 square feet.

Article passed by unanimous voice vote.

A amendment was presented by Superintendent of Schools Donald Hayes to allow these funds to go into the Hopedale Endowment Trust Fund. The Administrator, John Hayes, questioned the legality of this amendment, that the article in the warrant was not broad enough to allow amendment by the meeting. Moderator Howard noted that the town administrator's question was in order and ruled the amendment out of order.

*Eric M. Brown*  
A true copy, ATTEST  
Town Clerk



The acceptance of the gift and the granting of the rights and  
concessions hereunder shall take effect on the date that the Board  
of Selectmen cause 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. Bennett warrant was dissolved by  
unanimous voice vote at 9:35 P.M.

A TRUE COPY

ATTEST: ROBERT S. PHILLIPS  
TOWN CLERK

*Lee M. Brown*

A TRUE COPY, ATTEST  
Town Clerk

Exhibit A-2

1985 Plan



**ADDENDUM TO APPLICATION  
FOR APPROVAL OF DEFINITIVE PLAN  
Hopedale Ridge – A Definitive Subdivision Plan**

**Exhibit 5**



# HOPEDALE FIRE DEPARTMENT

40 Dutcher Street - Hopedale MA 01747

Tel. 508-473-1050 Fax: 508-902-0076

[www.hopedale-ma.gov/firedepartment](http://www.hopedale-ma.gov/firedepartment)

*Thomas Daige - Fire Chief*

*David McMorrow - Deputy Chief*



Mr. Ricardo Lima & Mr. John Burns  
3 Whitney Road  
Hopedale MA 01747

February 9, 2022

Mr. Lima & Mr. Burns,

I have reviewed the plans for the proposed cul-de-sac and have no issues regarding public safety.

Also, thank you to agreeing to allow the Fire Department to utilize the structure located within lot 1 on the proposal for training purposes.

Respectfully,

A handwritten signature in black ink, appearing to be "T. Daige", written over a horizontal line.

Thomas Daige  
Fire Chief