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March 4, 2024

Maura E. O'Keefe, Esq.
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Town of Falmouth
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RE: Request for Action Regarding the Preservation of Historic and Ancient Access to Falmouth's Public Resources: Black Beach and the Great Sippewissett Marsh

Dear Attorney O'Keefe:

I write this letter as a seasonal resident of Falmouth and a concerned member of the community that is directly and adversely affected by the decision of the Falmouth Conservation Commission dated January 10, 2024.

Many residents of West Falmouth, both seasonal and year-round, regularly access Black Beach and the Great Sippewissett Marsh from the Shining Sea Bikeway through Little Neck Bars Road in the area of the proposed gate. The applicant of record, the Black Beach Harbor Head Association a/k/a Black Beach Harbor Head Civic Association, Inc. (hereinafter referred to as "BBHHA" or the "Applicant") refers to the proposed gate as a "safety gate" yet has submitted no evidence to the Falmouth Conservation Commission (the "Commission") that this gate will improve safety. This is in truth, a deterrence gate, and the Applicant now contests, through its appeal to the MassDEP, reasonable conditions evidencing a future intent to lock this gate. Through this letter, we hereby formally request the following actions be taken by the Town of Falmouth:

1. The Commission issues a cease-and-desist order concerning BBHHA's Notice of Intent application/permit for work and Order of Conditions (DATE order of conditions) pursuant to FWR 10.05(7)(e) and re-hear the Applicant's proposed project based on **the fact that BBHHA submitted an incomplete and misleading application to the Commission;** and

2. The Town of Falmouth (the “Town”) seek judicial review to formally establish the legal status of Little Neck Bars Road (as it extends to the Shining Sea Bikeway), the contested way and end a dispute of great public concern ongoing since at least the 1950s.

We end this letter with a comprehensive review of the Applicant’s misguided appeal to the MassDEP.

As you are aware, there are many other neighbors in West Falmouth, and members of the public, who agree with this position and are against the erection of a gate. As of the date of this letter, there are approximately 1,494 signatures on a petition to prevent the erection of gate over the subject area, published on January 15, 2024. (Please find the live link to said petition: <https://www.change.org/p/protect-public-access-to-black-beach>).

Regrettably, I am not be able to attend the site visit scheduled on March 7, 2024, concerning the MassDEP appeal by the Applicant, but I know many other aggrieved and interested parties will be in attendance.

A. Introduction

The public has serious concerns about the Commission’s decision to allow the construction of the gate. Specifically, we do not believe the property owner listed on the Applicant’s Notice of Intent, Frederick Wirth, is the title owner of the area where the proposed gate is to be constructed. It is our position that the application submitted to the Commission was **misleading and incorrect**. The Wetlands Protection Act and the Town of Falmouth’s bylaws require the Applicant to be the owner of the locus of the project or have the express permission of the property owner. See 310 CMR 10.05(4) and Town Code 234-4. After researching title, public records, historic maps, modern maps, and photographs, it is our belief that the proposed gate is planned across a 25-foot-wide public way created by statute, pursuant to M.G.L. c. 82, § 24.

Notably, the Applicant, intentionally or by mistake, failed to map this way on its site plan submitted as part of its Notice of Intent (“NOI”) application to the Commission. Accordingly, we ask the Commission to issue a cease-and-desist order pursuant to FWR 10.05(7)(e) and cause BBHHA to re-apply due to its fatal omissions.

B. Material Information Was Omitted By The Applicant In Its NOI And The Commission Must Act To Correct This As It Cannot Permit A Gate Over A Public Way.

It is well settled in Massachusetts that a public way may be established by laying out by public authority in a manner prescribed by statute. See Town of Concord v. Rasmussen, No. 17 MISC 000605 (HPS), 2022 WL 17256431, at *16 (Mass. Land Ct. Nov. 23, 2022). This manner of establishing a public way is commonly referred to as a statutory way. See *id.* It involves a showing that the road, at the time constructed, was laid out in a manner consistent with statute and they are public only in the sense of providing access to the public, but the town bears no requirements to maintain the road. See United States v. 125.07 Acres of Land, More or Less, 707

F.2d 11, 14 (1st Cir. 1983). Little Neck Bars Road was originally laid out for public access to land before the state legislature enacted, Chapter 203 of the Acts of 1846, making this an ancient way and therefore, a statutory way upon which the public is entitled to freely travel without interference. Statutory ways are commonly referred to as private ways, but they are private only in the sense that road maintenance is to be provided for privately. See Town of Concord v. Rasmussen, No. 17 MISC 000605 (HPS), 2022 WL 17256431, at *16 (Mass. Land Ct. Nov. 23, 2022).

The Applicant had actual and constructive notice of the status of this way and chose to omit it from its NOI application. This omission is material to the Commission's decision and likely would have persuaded the Commission to deny the Applicant's NOI. First and foremost, in his formal capacity as president of BBHHA, Brian M. Storms (who is currently on the Board of Directors of the BBHHA), openly referred to the locus of this project as a "road" "which has been in continuous usage since the Colonial Period" in a letter to the Commission dated December 3, 1999, further evidencing the Applicant's notice of this condition. A true copy of said letter dated December 3, 1999, and signed by Brian Storms as president of the BBHHA is attached hereto as **Exhibit A**. Please also see five affidavits (four signed and notarized, one unsigned) from various residents of BBHHA produced for a 2001 dispute over the status of this same access point attached hereto as **Exhibit B**. Each affidavit evidence ongoing use of the disputed area in a manner consistent with a way.

Next, notice of this way, was incorporated into an application for the construction of water lines and recorded on March 12, 1962, and attached hereto as **Exhibit C**. The residents of the homes that now make up the BBHHA expressly acknowledged the existence of this way through the recording of the October 8, 1959, Black Beach Pipeline Easement, an easement held by the Town of Falmouth, which specifically calls out a private way running in the proposed area of the gate. See **Exhibit D**.

This way was then incorporated in at least two site plans, which were submitted to the Town of Falmouth for the creation of 132 Little Neck Bars Road, and 139 Little Neck Bars Road in 1969 and 1970. See attached **Exhibit E** and **F**. These plans show a dotted continuation of road in the subject area and do not expressly call out its intended meaning. Contemporaneous notes from the 1970 Falmouth Planning Board meeting evidence the Planning Board's position that this access remained an ongoing public right of way following the approval of these lots. Please see a true copy of said contemporaneous notes attached hereto as **Exhibit G**.

Reference to this way is expressly called out in other various deeds over the years. The 1948 deed from Virtue Gifford to Deborah Lawrence Harlow recorded with the Barnstable County Registry of Deed, in Book 705 at Page 486 references this subject right of way. The deed states, "an old road or right of way extends from state highway by or through land of said Albert S. Bowerman in a westerly direction, across the above described lot or parcel and across said railroad to other land of the grantor." The deed goes on to state, "said lot or parcel is conveyed together with an existing right appurtenant thereto to pass and repass over said old road or right of way, on foot and with vehicles in common with the grantor, her heirs and assigns, and others entitled

thereto. See a true copy of said deed attached hereto as **Exhibit H**. See also a September 1957 deed from Virtue Gifford to Harold and Elisabeth Travis recorded with said Registry in Book 981 at Page 2, which states, “so much of the land described in the forgoing parcels as is included in any road or way, is conveyed subject to the right of all persons owning land abutting thereon and all of the others who are legally entitled thereto to pass and repass over and to use the same for all purposes for which similar roads or ways are commonly used.” See a true copy of said deed attached hereto as **Exhibit I**.

BBHHA also produced a six-page document in 1963 titled, *Road Situation Recapitulated to 1963*. The document is submitted by BBHHA’s then secretary, Gwendolyn F. Drew, and discusses the formation of BBHHA as an organization. In its first paragraph, the author writes, “we all live on two private roads which have some status as public right-of-way.” The document goes on to discuss in detail the modern history of BBHHA and efforts over the years to keep non-residents from walking through the neighborhood. Please find a true copy of BBHHA’s document titled, *Road Situation Recapitulated to 1963*, attached hereto as **Exhibit J**.

Finally, and perhaps most impactful on the issue of the Applicant’s notice, the Black Beach Pipeline Easement is expressly incorporated in the most recent deed for 139 Little Neck Bars Road recorded with the Barnstable County Registry of Deeds on September 28, 2021, in Book 34516 at Page 296. Specifically, said deed states, “The above-described premises are conveyed subject to and with the benefit of any and all rights, easements and restrictions of record, insofar as the same are in force and applicable.” This would include all easements and rights of way discussed above. Further the Black Beach Pipeline Easement held by the Town across the subject area was granted in order to install and maintain a water main benefiting the abutting property owners, including the owner of 139 Little Neck Bars Road. The Black Beach Pipeline Easement (see **Exhibit D**) is also in the chain of title for 139 Little Neck Bars Road and referenced in an original deed for this particular parcel of land (see **Exhibit I**). The Black Beach Pipeline Easement is clearly marked on a certain plan also recorded with said Registry at Plan Book 151 at Page 3 (see **Exhibit K**). Despite the abovementioned recordings, the Applicant fails to make any reference to this way or the easement beyond a center line marking.

Therefore, the Applicant’s NOI is defective on its face in that it fails to establish ownership and the decision of the Commission should be reconsidered on this ground as the Applicant failed to make this information available to the Commission. This relates to the Commission’s express interest in public access, explained in detail below. Considering the Commission’s interest in public access, it was crucial that the Applicant include the mapped and recorded access on the plan. This access is quite literally a resource area, which was omitted from the plans. **The Applicant’s failure to include information about the legal status of the roadway and existing easements impacted more than justifies the Commission’s ordering a cease and desist order pursuant to FWR 10.05(7)(e).** This alone should persuade the Town to reconsider BBHHA’s NOI due to its fatal omissions. We hereby request this action be taken by the Town and/or the Commission.

Finally, a conservation permit is not the final permit necessary to construct a gate over this way. M.G.L. c. 86 § 5 expressly empowers “any person” to “remove gates, rails, bars or fences

which are upon or across a public or private way legally laid out...unless they have been erected or continued by the license of the county commissioners or of the selectmen or road commissioners or of the person for whose use such private way was laid out.” Given this way’s status as a statutory way, the Applicant must seek additional approval from the Selectboard before constructing its proposed gate. Upon information and belief, no such approval has been sought.

C. The Commission Should Not Allow Construction Of A Gate As A Matter of Public Safety.

We also have safety concerns, which appear at one time or another to have been shared by the BBHHA. In a December 3, 1999, letter to the Commission, Brian Storms, acting in his capacity as the president of BBHHA (now a director of the BBHHA), pleaded and urged against the erection of a gate on the other side of the railroad tracks (now the Shining Sea Bike Path), blocking access to Little Neck Bars Road. See **Exhibit A**. Mr. Storms, on behalf of the BBHHA, writes in his opposition, “this represents an attempt to close a road, which has been continuous in usage since the Colonial Period.” Mr. Storms goes on to state, “the road remains an absolute necessity for alternate access and egress during natural catastrophes. During the Aug.19,1991 Hurricane ‘Bob’, it represented the only means of reaching the homes in the association, because of flooding of Little Neck Bars Rd.” Nothing has changed between Mr. Storms’ 1999 letter and today in terms of alternative access routes in the event of a natural disaster or extreme flooding.

Additionally, there are safety concerns for other residents of West Falmouth who use this path on a daily basis to access the public resources of Black Beach and the Great Sippewissett Marsh and serious environmental concerns if public access is lost. This path is the only reasonable and inclusive way for the public to access Black Beach and the Great Sippewissett Marsh. Other access points to Black Beach and the Great Sippewissett Marsh are dangerous, unreasonable, and inaccessible to all. Another access point, which the BBHHA suggests the public utilizes, is down Chapoquoit Road (which is narrow, busy, dangerous and not conducive to those with physical limitations, families with young children, or those on bicycle) and then via Chapoquoit Beach to Black Beach (which is also not a viable option for those with physical limitations, families with young children, or those on bicycle as the beach is not passable during high tide and with multiple jetties). The other access point is through the Great Sippewissett Marsh, which would be devastating and destructive to the environment which has been long protected by the Town of Falmouth, the 300 Committee, and the Salt Pond Area Bird Sanctuaries.

Although we appreciate the Town’s special conditions included in the Order of Conditions dated January 10, 2024, the erection of this gate should not be permitted by Town or the MassDEP as there are significant safety concerns, concerns of public access to the Town’s public resources, including the sea, and the legal inability to construct a gate across a statutory way. For all of these reasons, the gate cannot be constructed. If such issues are not addressed by the Town, it is the intent of aggrieved parties to raise these issues in the Barnstable Superior Court.

D. MassDEP Should Deny The Applicant’s Requested Relief.

We next turn to the issues before the MassDEP and address the reasons the Applicant’s appeal here must fail.

1. Background

On January 10, 2024, the erection of the gate was approved by the Commission who imposed standard and special conditions, included in the Order of Conditions. The Applicant has now appealed said Order of Conditions to the MassDEP on or about January 22, 2024. The appeal concerns four of the special conditions imposed by the Commission in its Order of Conditions:

No. 3: The gate shall swing into and towards Little Neck Bars Road and not into and towards the bike path.

No. 4: There shall not be a lock on the gate, the gate shall remain unlocked at all times.

No. 5: There shall be no blocking of the gate at any time, with any material, object or structure.

No. 6: There shall be no signs on the gate and fence.

Special Condition 3 was presumably put into the Order of Conditions for the safety of those on the Shining Sea Bikeway and those accessing the Shining Sea Bikeway from Little Neck Bars Road. It is certainly a safety concern if the Commission allowed a gate that swung into the bike path. Special Conditions 4, 5, and 6 concern the same issue, public access to land and sea as accessed through the area of the proposed gate. M.G.L c. 131, § 40, empowers conservation commissions to impose conditions, which contribute to the protection of interests described in the Wetlands Protection Act. In its appeal to MassDEP, the Applicant argues its proposed project is a minor activity and not subject to the regulation of the Commission. The Applicant has alleged the Commission erred by overreaching its statutory power pursuant M.G.L c. 131, § 40. The Applicant is misguided in both assertions, which are addressed in turn below.

2. Legal Basis For Denial Of The Applicant's MassDEP Appeal.

First, it is not disputed that the proposed gate is planned to be located within the Black Beach/Great Sippewissett Marsh District of Critical Planning Concern ("BBGSCPC") and this finding was expressly made by the Commission in its Order of Conditions. Turning then to the Applicant's arguments, the Applicant is incorrect that its proposed gate constitutes a minor activity under 310 CMR 10.02 (b). Although fencing is normally considered a minor activity and thus not subject to M.G.L c. 131, § 40 and the conditions of the Commission, this changes when the fence is proposed, as it is here, within an area specified in 310 CMR 10.02(1)(a) through(e), which expressly includes any, coastal wetland or bordering on any ocean, estuary, pond, land subject to tidal action, land subject to coastal storm flowage, land subject to flooding.

The proposed gate is located in a mapped AE18 flood zone according to the Applicant's site plan. Please see a true copy of the Applicant's site plan attached hereto as **Exhibit L**. The gate is thus located on land subject to coastal storm flowage and land subject to flooding within the definitions of 310 CMR. Therefore, according to 310 CMR 10.02(1) the proposed gate is squarely within the review of the Commission under M.G.L c. 131, § 40 and the Applicant's argument that its proposed gate is a minor activity not subject to M.G.L c. 131, § 40 must fail.

Turning to the Applicant's arguments surrounding the Commission's imposed conditions, the Town has the ability, under the Home Rule Amendment to adopt wetland bylaws and regulations so long as they are not "inconsistent with constitution or laws enacted by the general court in conformity with powers reserved to the general court . . . and which is not denied, either expressly or by clear implication, to the city or town by its charter." Lovequist v. Conservation Comm'n of Town of Dennis, 379 Mass. 7, 15 (1979). Through M.G.L c. 131, § 40, the legislature expressly empowered towns to set wetland protection standards that are more demanding than those set forth in the statutory scheme contemplated in the Wetlands Protection Act so long as towns impose such conditions as will contribute to the protection of the interests of the act. *Id.* Additionally, Town Code § 235-14 specifies, "With respect to the Black Beach/Great Sippewissett Marsh District of Critical Planning Concern, this bylaw is adopted under the Home Rule Amendment to the Massachusetts Constitution and the Home Rule statutes, as well as c. 716 of the Acts and Resolves of 1989, as amended, and Barnstable County Ordinance 96-1."

The Commission has properly adopted the conditions to deny the subject gate and impose the contested conditions through its adoption of Town Code § 235 (Falmouth Wetlands Protection Bylaw) and through this code, adopting its wetland regulations found in FWR 10. Through its bylaw and regulations, the Town has properly established regulations that meet and exceed the scope of the Wetlands Protection Act, which is entirely the point of M.G.L c. 131, § 40.

Relevant here, the Town Code § 235 -1 defines the purpose of the bylaw, "to protect the wetlands, related water resources and adjoining land areas in Falmouth by controlling activities deemed by the conservation commission as likely to have a significant or cumulative effect upon resource area values." Section B Town Code § 235 -1 of goes on to highlight values which are expressly protected in the BBGSCPC, those include, "prevention of flood damage...public access to water and land,...minimization of the impact of new development, reconstruction and/or expansion on the resource area values protected by this bylaw." (emphasis added).

The Town then implements its Bylaw with FWR 10.39, which creates a presumption that where any project involves "building upon or otherwise altering of land or waters within the Black Beach/Great Sippewissett Marsh District of Critical Planning concern." The Commission shall presume such area is Significant (as defined in FWR 10.04).

To implement this interest and presumption, the Town established performance standards encompassed in FWR 10.39(4) and 10.39(12). First, FWR 10.39(4) states, "work in the Black Beach/Great Sippewissett Marsh District of Critical Planning Concern shall meet the performance standards for any other Resource areas within which work is proposed and, where the presumption set forth in FWR 10.39(3) is not overcome, FWR 10.39(5) through (29) shall apply."

Next, FWR 10.39(12) states, "Notwithstanding the provisions of FWR 10.39(6) through (11), no project shall be permitted which will have any Adverse effect on land under the Ocean, or if proposed on Land under a Salt pond, on lands within 100 feet of the mean high water line of a Salt pond, or on land under a body of water adjacent to a Salt pond, shall be permitted which will have any Adverse effect on the marine fisheries or Wildlife habitat of the Salt pond, or ability of the public to access the land and waters of the Salt pond." (emphasis added).

The Town then created a mechanism to deny applications that do not meet its performance standards or, as is the case here, create conditions to protect its interests, through Town Code §235-7, which empowers the Commission to deny a permit for, “failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this chapter.” Or to issue conditions on any permit, “which the commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.”

Public use is expressly contemplated in the Wetlands Protection Act, through its water-dependent uses; defined as,

those uses and facilities which require direct access to, or location in, marine, tidal or inland waters and which therefore cannot be located away from said waters, including but not limited to: marinas, public recreational uses, navigational and commercial [sic] fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an upland site, crossings over or under water bodies or waterways (but limited to railroad and public roadway bridges, tunnels, culverts, as well as railroad tracks and public roadways connecting thereto which are generally perpendicular to the water body or waterway), and any other uses and facilities as may further hereafter be defined as water-dependent in 310 CMR 9.00: Waterways.

See 310 CMR:10.04. (emphasis added).

The Wetlands Protection Act further gives deference to water-dependent uses in 10.25(6), 10.31(4), and 10.27(6) allowing projects to be designed and constructed using best available measures where non-water dependent projects must have no adverse effect under the sections. This shows public use of the sea is clearly an interest of the Wetlands Protection Act and may be regulated through M.G.L c. 131, § 40.

The issue of recreational or public use and its relationship to the Wetlands Protection Act has been taken up by Massachusetts courts. In Rodgers v. Conservation Comm'n of Barnstable, 67 Mass. App. Ct. 200, 20 (2006) the Barnstable Conservation Commission was challenged by an applicant for denying a project based upon its bylaw. The purpose of the Barnstable bylaw is stated as “the protection of shellfish and recreation.” *Id.* Despite the court concluding that the DEP only refers to recreation, “as an aspect to be taken into account by a conservation commission or DEP in deciding whether land can be considered significant to the protection of land containing shellfish.” The Town of Barnstable’s bylaw was enforceable because it regulated recreational pursuits more astutely than the Wetlands Protection Act. *Id.* The Wetlands Protection Act merely establishes statewide minimum standards from which local communities are free to impose more stringent requirements. Oyster Creek Pres., Inc. v. Conservation Comm'n of Harwich, 449 Mass. 859, 866 (2007). Such is clearly the case here.

To overturn the decision of a conservation commission, the applicant must show that the decision of the commission was arbitrary and capricious or unsupported by substantial evidence.

See Lovequist v. Conservation Commn. of Dennis, 379 Mass. 7, 18 (1979); FIC “If the agency has, in the discretionary exercise of its expertise, made a choice between two fairly conflicting views, and its selection reflects reasonable evidence, a court may not displace [the agency's] choice.” Conservation Commn. of Falmouth v. Pacheco, 49 Mass.App.Ct. 737, 739–740 n. 3 (2000) (internal citations omitted).

The Commission’s conditions are narrowly tailored here so as to protect its legitimate and rightful interests, including, but not limited to public access. Any action by the MassDEP to interfere with these conditions is improper by statute, law, and equity. We hope this brief enables and empowers the Town to at least hold firm in its conditions. Further, the applicant’s appeal to the MassDEP, specifically over condition No. 4, which shows an intent to lock this gate at some point in the future, otherwise, the Applicant’s actions beg the question why seek to reserve the right?

E. Request For Joined Action By The Town Of Falmouth.

Based upon new information submitted and attached hereto, including the site plans, the 25-foot Black Beach Pipeline Easement, and the 1999 letter from BBHHA, we have, at a minimum, shown incorrect or misleading information was included in the Applicant’s NOI application for the construction of this gate. The Applicant has submitted a site plan that fails to make any mention of a historic way, or the express pipeline easement, and therefore, this Commission was prejudiced by the Applicant’s failure to be forthright.

We now call upon the Town to invoke FWR 10.05(7)(e) to issue a cease and desist order stating that no work is to be undertaken until a new or amended permit is issued and reconsider this NOI application with all available information. Finally, we call upon the Town to seek a declaratory judgment and adjudicate the legal status of this access as a statutory way as the Town of Concord astutely did on behalf of its residents in *Town of Concord v. Rasmussen*, No. 17 MISC 000605 (HPS), 2022 WL 17176790, at *1 (Mass. Land Ct. Nov. 23, 2022), order corrected and superseded, No. 17 MISC 000605 (HPS), 2022 WL 17256431 (Mass. Land Ct. Nov. 23, 2022).

F. Conclusion

The Town is putting the burden of disputing public access on a group of concerned and aggrieved residents. This is a matter of public importance and should be properly taken up by the Town, independent of individual residents. In June of 1999, the Massachusetts Coastal Zone Management Office published a 211-page handbook titled, *Preserving Historic Rights of Way to the Sea*.¹ The document’s preface, defines the public nature of the problem before the town and should serve as a call to action for all people who care about the quality of life in our coastal towns:

For hundreds of years, the lifeline of Massachusetts cities and towns was their access to the sea. Culture and livelihoods revolved around the water, spawning generations skilled in trading, fishing, shipbuilding and navigation. Although modern needs have largely shifted from industry to recreation, coastal access still

¹ <https://www.mass.gov/doc/preserving-historic-rights-of-way-to-the-sea-a-practical-handbook-for-reclaiming-public-access/download>.

remains vitally important to our quality of life. Yet, despite 1500 miles of gorgeous coastline, Massachusetts provides relatively little public access to the sea. About 75 percent of the coast is privately owned and much of the remaining 25 percent, though publicly owned, is inaccessible. To complicate matters, when Massachusetts residents do reach the shoreline, state law often severely limits their permitted activities. The Commonwealth stands nearly alone among coastal states in recognizing private ownership down to the low tide mark. In times of tight public budgets and sky-high coastal land values, what can concerned citizens do?²

Until the rights and responsibilities of the parties are fully adjudicated, this issue will continue to burden the Town and its residents. Please reassess this situation with all available information and take action to establish ownership by the Town of the locus of this proposed gate.

We look forward to working with the Town to come to a final resolution to this matter.

Sincerely,

Benjamin T. Carroll

Benjamin T. Carroll

cc: Falmouth Conservation Commission (concom@falmouthma.gov)
Falmouth Select Board (selectboard@falmouthma.gov)
Falmouth Planning Board (planning@falmouthma.gov)
Falmouth Historical Commission (fhc@falmouthma.gov)
MassDEP (Attn: Maissoun Reda, Chief, maissoun.reda@mass.gov)
Brian Wall, Esq. (bjw@troywallassociates.com)

² See *id.*

EXHIBIT A

Black Beach Harbor Head
Association
PO Box 1212
W.Falmouth MA,02574
December 3,1999

Ms.Margaret Ensle,Director
Conservation Commission
Town of Falmouth,MA 02540

Subject Permit to construct a fence on Bedell property

Dear Ms. Ensle,

The Black Beach Harbor Head Association is an association of thirty-six summer and permanent residence occupying a large area adjacent to Mr. Richard L.Bedell's property, in W.Falmouth . It has come to our attention that a petition, to be heard Dec. 8,1999, has been submitted for a permit to build a 40'x6' chain link fence across Black Beach Road.

This represents a matter of crucial concern to the members of this community. As can be seen from the map enclosed, this represents an attempt to close a road, which has been continuous in usage since the Colonial Period. (Road in yellow. Location of fence in red) This road, extending in a westerly direction from Black Beach Rd., beyond the Bidell property, is now called Little Neck Bars Road. Until the late 19th century this represented the only access to Hog Island (Chapoquoit Is.) and the beach area. This access was rendered less significant with the construction of the bridge on Chapoquoit Rd. , however , the road remains an absolute necessity for alternate access and egress during natural catastrophes. During the Aug.19,1991 hurricane "Bob", it represented the only means of reaching the homes in the association , because of flooding of Little Neck Bars Rd. at its westerly entrance,due to inadequate drainage through a culvert on Chapoquoit Rd. ; a condition that still exists.

The presence of such a fence will impede access by public service and medical emergency vehicles with possible dire consequences to life and limb of the permanent residents. Mr. Bidell is not in residence during the winter months and leaves behind an unacceptable impediment to the members of the association and the community.

Recognizing that the Conservation Commission if not an appropriate forum to adjudicate the legal baggage that accompanies Mr. Bedell's petition, and the astute timing of this request on behalf of the applicant, it is hoped that the granting of this permit will be postponed to a more appropriate time for a broader and more proper hearing of the issues involved.

Respectfully submitte,

Brian M. Storms, President
Doris Reade, Secretary

Black Beach Harbor Head Association

EXHIBIT B

AFFIDAVIT

COMMONWEALTH OF MASSACHUSETTS

Barnstable County

Town of West Falmouth, MA

AFFIDAVIT OF GUY F. GARLAND

I, Guy F. Garland, having duly sworn state:

1. My summer address is 28 Drift Road, West Falmouth, Massachusetts.
2. I was born in 1943 and have lived in the Black Beach / Little Neck bars Road section of West Falmouth since 1968 as a summer resident. From 1943 until 1968, I was a frequent visitor to 28 Drift Road every summer, and occasionally in the winter.
3. When I was 16 years old I worked at the E.E. Swift Food Market in Falmouth.
4. I am a member of the Black Beach / Harbor Head Association, consisting of landowners on Black beach Road, Drift Road and Little Neck Bars Road, West Falmouth.
5. From the time I was a baby, until the present, I have visited 28 Drift Road many times every summer. From 1943 until 1954, the visits were to my grandfather, Dr. Frederick E. Garland. From 1954 until 1968, the visits were to his widow Mary Garland.
6. From 1943 until 1954 my family and I would visit my grandparents at 28 Drift Road using the Little Neck Bars Road entrance off Route 28a (where the chain link fence is being proposed). As far as I knew at the time, this was the ONLY access to the beach.
7. Then, as I remember it, in 1954 Hurricane Carol destroyed part of the railroad tracks that cross Little Neck Bars Road. After they were rebuilt, access was restored. We continued to use this road to access Drift Road every time we went to visit.
8. In addition to visiting my grandparents, we would also go picnicking on the beach by the Sippewissett tidal river. The swimming was (and still is) wonderful, and we would ride the tide, floating on our inner tubes down the river.
9. In 1968 my grandmother died, and we took up summer residence at 28 Drift Road. We would walk frequently from 28 Drift Road, down Little Neck Bars Road to route 28a to the Hardware Store, and back again.
10. I played on Black Beach and in the Sippewissett Salt Marsh. As a child I used to go fishing with my father in Buzzards Bay, off Black beach. I also learned to water ski there.
11. I used Little Neck Bars Road mostly in the summers. Very frequently I would pass other walkers on the road.
12. I never received permission from anyone to walk any portion of Little Neck Bars Road, nor did anyone stop me from walking on it.

Signed under the pains and penalties of perjury this ____09th__day of ____May____, 2001.

Guy F. Garland

COMMONWEALTH OF MASSACHUSETTS

[Barnstable]

[May 9, 2001]

Then appeared before me the said John Doe, having been duly sworn stated the foregoing statement is true and correct to the best of his information and belief.

Date: _____

NOTARY PUBLIC

My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

[Barnstable County]

Town of Falmouth, MA

AFFIDAVIT OF Ruth H. Garland

I, Ruth H. Garland, being duly sworn state:

1. I currently reside at 140 Ter Heun Drive, Falmouth, Mass.
2. Previously I lived at 28 Drift Rd., West Falmouth Mass. Since June 3, 1939. This home has been in my husbands family (the Garlands) since 1926.
3. We traveled Little Neck Bars/Black Beach Road continually, as it was the only way to and from Black Beach from 28A for many years.
4. Little Neck Bars/Black Beach Road was used for salt marsh haying, as was Black Beach Road, (probably one and the same until Chapoquiot bridge was built.)
5. About 1945 there was an accident at the railroad crossing west of Little Neck Bars/Black Beach Rd., since then we used Chapoquiot Rd by automobile.
6. My son and his family use Little Neck Bars/Black Beach Road currently during the summer season to cross easterly and westerly over the railroad tracks on foot and by bicycle to 28A.
7. At the time of the last hurricane, Hurricane Bob in 1991, Little Neck Bars/Black Beach Road was our only exit to 28A easterly over the railroad tracks. Public safety requires two exits.
8. I have never asked permission to travel on Little Neck Bars/Black Beach Road.
9. I am not able to walk far at this time, but many neighbors walk to the Post Office daily using Little Neck Bars/Black Beach Road back and forth over the railroad tracks.

Signed under the pains and penalties of perjury this 1 day of March, 2001.

Ruth H. Garland

Ruth H. Garland

COMMONWEALTH OF MASSACHUSETTS

[Barnstable]

[date March 1, 2001]

Then appeared before me the said Ruth H. Garland, having been duly sworn stated the foregoing statement is true and correct to the best of her information and belief.

Date: March 1, 2001

Karon E. Fleer
NOTARY PUBLIC

My Commission expires: August 21, 2003

Barnstable

COMMONWEALTH OF MASSACHUSETTS

Town of Falmouth, MA

Affidavit of Geoffrey Thompson

I, Geoffrey Thompson, having duly sworn state:

1. My address is 141 Braeside Road, Falmouth, Massachusetts.
2. I was born in 1935 and have lived in Falmouth since 1965.
3. I am a scientist and have worked at the Woods Hole Oceanographic Institution since 1965, and am presently a Scientist Emeritus at that Institution.
4. From 1969 to 1975 I lived on Little Neck Bars Road also known as Black Beach Rd, in the house at the intersection of that road with Rte 28A.
5. During the period from 1969 to 1975 I and my family used Black Beach Road for access to Sippewisset Marsh and Black Beach a few times a week, year round, for walking the dog, jogging and cycling.
6. Because our house overlooked Black Beach Road we were able to observe, on a daily basis, that Black Beach Road was well used, uninterruptedly, by a number of walkers, occasional cyclists, and even horse riders.
7. From 1975 to the present day I have lived on Braeside Rd. During this period I have continued to use Black Beach Road for access to Black Beach, either walking or jogging, on a weekly to monthly basis, year round.
8. My children, and in the past two years my grandchildren, continue to use Black Beach Road for access to Black Beach in the summer months from 1975 to the present.
9. I have never, from 1969 to the present day, received permission from anyone to walk any portion of Black Beach Road, nor did anyone stop me from walking that road.

Signed under the pains and penalties of perjury this 25th day of Feb 2001.

Geoffrey Thompson

Geoffrey Thompson

Barnstable

COMMONWEALTH OF MASSACHUSETTS

25th day of Feb 2001

Then appeared before me the said Geoffrey Thompson, having been duly sworn stated the foregoing statement is true and correct to the best of his information and belief.

Date: February 25, 2001

Karen E. Allen
NOTARY PUBLIC

My commission expires: August 21, 2003

COMMONWEALTH OF MASSACHUSETTS
WORCESTER COUNTY TOWN OF GRAFTON

AFFIDAVIT OF Marsha R Platt
122 Brigham Hill Rd, N Grafton, MA 01536-1106
phone 508-839-2012 FAX 508-839-5865
e-mail: m.platt@worldnet.att.net

I, Marsha Rankin Platt, having duly sworn state:

1. My parents, Walter M and Eleanor M Rankin bought beach front property from Simpson Heald in September 1939. Included in deed 426/366 & 7 is the reference "with rights to pass and re-pass over the existing way to the highways of Falmouth".
2. The Town of Falmouth has recently identified this property address as 26 Drift Road.
3. I was born in 1937 and summered at Black Beach each and every year since.
4. Our usual entrance to Black Beach was the dirt road, now called Little Neck Bars road; I always thought it was an extension of Brick Kiln Road.
5. The use of the road to Chapaquoit Road was seasonal. In the spring the sand drifts made it almost impassible.
6. Some time in the 1955 the level crossing over the railroad tracks was closed after an accident resulted in a death.
7. By 1951, the Black Beach/Harbor Head Association had made arrangements with the Bowerman family to reconstruct the road to Chapaquoit Rd. After 1955 it became the only means of egress from black Beach.
8. Emergency egress from Black Beach was always a concern. I was at Black Beach after the 1955 Hurricane. People were led out of the Black Beach area via the Haynes (now Wilson) in waist deep water.
9. During Hurricane Bob in 1991, cars exited Black Beach over the railroad tracks, on Little Neck Bars Road, with the help of timbers left beside the road for that use.
10. When the town water line was installed, from West Falmouth Highway down Little Neck Bars Road to Black Beach Road, my parents had to sign off on the plan, implying they had rights to the "way", which was called a private way on the plan.
11. My family has traveled Little Neck Bars Road by foot, by car and by bicycle for over sixty years.
12. Prior to 1999, I have never been stopped by any owner. I have never sought permission to use the road (In contrast to our always seeking permission from the Haynes, now Wilson, to walk over their property to Chapaquoit Road).

13. In 1999, while walking to the post office, on Little Neck Bars road, Mrs. Bedell stopped me with "Can't you read?". When I assured her that I could read, told her who I was and where my property was, she had no objection to my continuing along the road. There has been no objection since.

14. There is a recorded plan dated 1912 that shows Little Neck Bars Road.

Signed under the pains and penalties of perjury this twenty second day of February, 2001.

Marsha Rankin Platt
Marsha Rankin Platt

COMMONWEALTH OF MASSACHUSETTS

Worcester

February 22, 2001

Then appeared before me the said Marsha Rankin Platt, having been duly sworn stated the foregoing statement is true and correct to the best of his information and belief.

Nancy J. Hazen
Notary Public
My commission expires: Oct 27, 2006

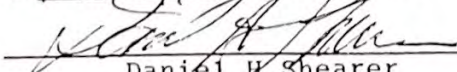
COMMONWEALTH OF MASSACHUSETTS

AFFIDAVIT OF DANIEL SHEARER

I, Daniel H Shearer, having duly sworn state:

- 1) My address is 30 Chapoquoit Road, West Falmouth, MA
- 2) My parents built a summer home at 45 Little Neck Bars Road, also called, Black Beach Road, West Falmouth, MA. in 1953.
- 3) As I was growing up we entered and exited the property to Route 28 by Little Bars Neck Road.
- 4) In 1957, I believe the year to be, a pickup truck was hit by a train at the crossing and the driver killed. At that time the residents decided to "close" the crossing to cars with signage, but was left open to walkers, bikes and emergency access in case of a storm. In Hurricane Carol people might have drowned if this road had been closed as it was the only way out of the beach area. The route to Chapoquoit Road was under 8 to 10 feet of water. We had very little warning and we all waded out, and the road to Chapoquoit road was closed for weeks. We lost 3 cars parked in our driveway as the water did not come from the sea side, but from the marsh behind the houses.
- 5) My parents deed stated they had a right of way to use the existing road to and from the highway in common with others. We used it almost daily to bike to friends homes in the summer and later to the post office when it was moved to its current location year a round.
- 6) I purchased the property in 1983 and have rented it ever since. I have told my tenants to use this road and have knowledge they did. Ms Sophie Hills walked for the mail every day, as she did not drive a car. She was their from 1983 - 1994. My current renter, Jay Cashman bikes and walks the path often.
- 7) I also use the the road to walk my dog to the beach every morning. No one has ever told me I could not do this, and I have always felt I had the right to be there. Everyday I meet people with and without dogs on the road doing the same.

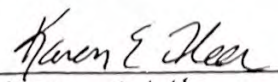
Signed under pains and penalties of perjury this 26 day of February, 2001.


Daniel H Shearer

Commonwealth of Massachusetts
Barnstable 2/26/01

2/26/01

Witnessed by:


NOTARY PUBLIC
My Comm. expires
Aug. 21, 2003

Then appeared before me the said
Daniel Shearer, having been duly sworn
stated the foregoing statement to be true
and correct to the best of his informat
and belief.

EXHIBIT C

168-9

172.0

Sophie W. Baptiste

Harold G. Travis et ux

N.Y.N.H. & H. RAILROAD

LITTLE NECK BARS ROAD

BARNSTABLE
REGISTRY OF DEEDS
MAR 12 1962
12:40 P.M.
RECORDED

Harold G. Travis et ux

Doris Hughes Reade
(B. 1100 R. 531)

S 83° 11' 00" E

140.00

Pole Line

Harold G. Travis et ux

N 5° 06' 20" E

190 ±

29,000 ± sq. ft.

30.

S 84° 53' 40" E

Harold G. Travis et ux

109.61

S 5° 06' 20" W

20 ±
d.b. in
stone



FRESH

POND

"At a meeting of the Falmouth Planning Board held 6 Feb, 1962 it was voted:

1 That the within plan is approved for record under the provisions of Chapter 674, of the Acts of 1953."

I, Felice M. Franco, Jr., Clerk of the Town of Falmouth, Massachusetts, hereby certify that the notice of approval of this plan by the Falmouth Planning Board has been received and recorded at this office and no appeal was received during the twenty (20) days next after such receipt and recording of this plan.

Signed Felice M. Franco, Jr.
Town Clerk

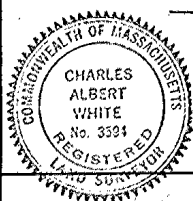
Plan of Land of

Harold G. Travis et ux

West Falmouth

Scale 1" = 50' ~ Dec. 9, 1961

Charles A. White, C.E.



G.G. Whitney
Signature
Chairman

EXHIBIT D

1056
484

to me
dated April 1, 1955
recorded with Barnstable County Registry of Deeds
Book 904 Page 156 acknowledge satisfaction of same.

Witness my hand and seal this 10th day of January 1958
JOE F F I C I A L JOE F F I C I A L
C O P Y C O P Y

NOT NOT
The Commonwealth of Massachusetts
Suffolk JOE F F I C I A L JOE F F I C I A L
Then personally appeared the above named Lionel D. Greene
C O P Y C O P Y
and acknowledged the foregoing instrument to be his free act and deed

before me
Moses I. Richman
MOSES I. RICHMAN Notary Public - State of Mass.
My Commission expires 2/18 1962

Barnstable, ss., Received October 8, 1959, and is recorded.

GRANT OF EASEMENT

WHEREAS the Town of Falmouth, through its Water Department, proposes to install a water main extending from the junction of the State Highway, sometimes called Route 28, in West Falmouth and Brick Kiln Road, in a westerly direction to land of Webber and is about to install a main for a portion of said distance at once; and

WHEREAS the said Way is a private way and it is necessary as provided in the By-laws of the Town of Falmouth that there be furnished to the Town previous to the installation of said main a good and sufficient easement over said way for the installation, repair and replacement of said water main;

NOW THEREFORE, the following, being all of the abutting owners on said way, all to be served by the new water main, hereby jointly and severally agree that in consideration of the installation by the said Town of Falmouth of the water main as hereinbefore described, with the necessary appliances and hydrant protection, such installation, with the exception of incidental expense such as engineering costs, drafting and recording of easements etc, to be at the sole expense and undertaking of the Town of Falmouth, do hereby grant to the said Town of Falmouth an easement in and over said Way twenty=

See Plan Filed in Plan Book 151, Pages 3 & 5

NOT
AN
OFFICIAL
COPY

NOT
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OFFICIAL
COPY

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five (25) feet in width, measuring twelve and one-half (12½) feet on each side of the center line of said Way or pipe line easement, as set forth on plan entitled "BLACK BEACH PIPELINE EASEMENT Scale 1" = 40', 1958", consisting of Four sheets, such easement to be a perpetual easement for the purpose of installing, maintaining, repairing and replacing the said main and the owners thereof agree that whereas in order to install the said water main it will be necessary to dig up the roadway to some extent that they will repair the same at their own expense and undertaking and keep the same in repair and condition and will not look to the Town therefor. They also agree that the Town is not to be responsible for any property damage

occasioned to shrubs, plants or trees in the installation or repair of said main or replacement thereof.

All of said parties further agree that they will join in attaching their water systems for their dwellings to said main irrespective of whether or not there are any other existing main or mains available as seems to be the case over a portion of the area to be served by the new water main.

It is further understood and agreed that all rules, regulations and requirements of the Board of Water Commissioners of the Town of Falmouth shall at all times be and remain in full force and effect and be binding upon all parties hereto, their heirs, executors, successors and assigns and devisees and grantees.

1056

486

WITNESS our hands and seals this 10th day of July

1959.

p/s. 4, 5
sheet 1 & 2p/s 6
sheet 2p/s 10
sheet 2p/s 2
sheet 1p/s 12
sheet 2p/s 13 (14)
sheet 2 & 3

p/s 22 sheet 3

cert 1978 8/17/78

p/s 17 sheet 3

p/s 18 sheet 3

p/s 19 (20) cert 1304

p/s 20 (21) sheet 3

p/s 21 (22) sheet 3

p/s 24 sheet 4

p/s 25 sheet 4

Charles F. Davis
NOT
AN
OFFICIAL

Cecilia B. Fugister
NOT
AN
OFFICIAL

John A. Fugister
NOT
AN
OFFICIAL

John M. Fugister
NOT
AN
OFFICIAL

John M. Fugister
NOT
AN
OFFICIAL

Saddle Hill, Weston 93 Mass
Saddle Hill, Weston 93 Mass
NOT
AN
OFFICIAL

Woods Hole, Mass
Woods Hole, Mass
NOT
AN
OFFICIAL

New York, N.Y.
New York, N.Y.
NOT
AN
OFFICIAL

224 High Rock St. Westport, Mass.
224 High Rock St. Westport, Mass.
NOT
AN
OFFICIAL

224 High Rock St. Westport, Mass.
224 High Rock St. Westport, Mass.
NOT
AN
OFFICIAL

p/s 25 sheet 4

p/s 2 sheet 1

p/s 12 sheet 2

p/s 28 sheet 4

p/s 3 sheet 1

p/s 7 sheet 2

p/s 14 sheet 2

p/s 30 sheet 4

p/s 27 sheet 4

NOT ON
PRESENT LAYOUT

p/s 9 sheet 2

p/s 1 sheet 1

John A. Fugister 79 Irving Street, Hingham, Mass.

John A. Fugister 29 Irving Street, Hingham, Mass.

John A. Fugister Little Harbor Rd. Woods Hole, Mass.

John A. Fugister 24 Edison Dr. Summit, N.J.

John A. Fugister 21 Essex Ave. Summit, N.J.

John A. Fugister 123 Hampshire Road, Kelleys

John A. Fugister 25 Ricker Rd. Weston, 58 Mass.

John A. Fugister 25 Ricker Road, Weston, 58 Mass.

John A. Fugister Black Beach Rd. W. Barnstable, Mass.

John A. Fugister 5 Black Beach Rd. W. Barnstable, Mass.

John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

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John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

John A. Fugister 4 F. Pelissier Rd. Hudson, Mass.

NOT ON PRESENT LAYOUT	NOT	NOT
pl. 31 Sheet 4	NOT	NOT
pls. 23+24 sheets 3+4 cert. 8119 Book 50 Page 59	NOT	NOT
pl. 9 Sheet 2	NOT	NOT
pl. 19 Sheet 3	NOT	NOT
ACCEPTED:	NOT	NOT
Robert L. Hunziker	NOT	NOT
BOARD OF WATER COMMISSIONERS OF	NOT	NOT
THE TOWN OF FALMOUTH	NOT	NOT
COPY	NOT	NOT

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

July 10, 1959

Then personally appeared the above named HAROLD G. TRAVIS and ELIZABETH S. TRAVIS and acknowledged the foregoing instrument to be their free act and deed, before me

Herbert E. Hunziker
Herbert E. Hunziker - NOTARY PUBLIC
My commission expires Dec. 17, 1959

Barnstable, ss., Received October 8, 1959, and is recorded.

EXHIBIT E

232-83 F2

1859

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

LITTLE NECK
BARS ROAD
(Private Way)

Private Way

Penn
Central
Railroad Company
Center Line

22,560 sq. ft.

N83°11'W 176.53

Pole Line

"At a meeting of the Falmouth Planning
Board held 2 September 1969 it was
voted:

' Approval under the subdivision control
law not required."

Ronald Hartwell Brown
Secretary

PLAN OF LAND
TO BE CONVEYED BY
HAROLD G. TRAVIS ET UX
WEST FALMOUTH, MASS.

Scale 1 Inch = 40 Feet August 30, 1969

I certify that this plan was made in accordance with
Falmouth Subdivision Regulations and that the permanent
points shown on the plan are in existence on the ground.

Book 232
Page 8-3

Robert W. Griffin
Robert W. Griffin
Reg. Land Surveyor
16 Evangeline Road
Falmouth (Quissett), Mass.

BARNSTABLE
REGISTRY OF DEEDS
OCT 30 1969
2 H-21 M.P.
RECORDED

RIGHT OF WAY

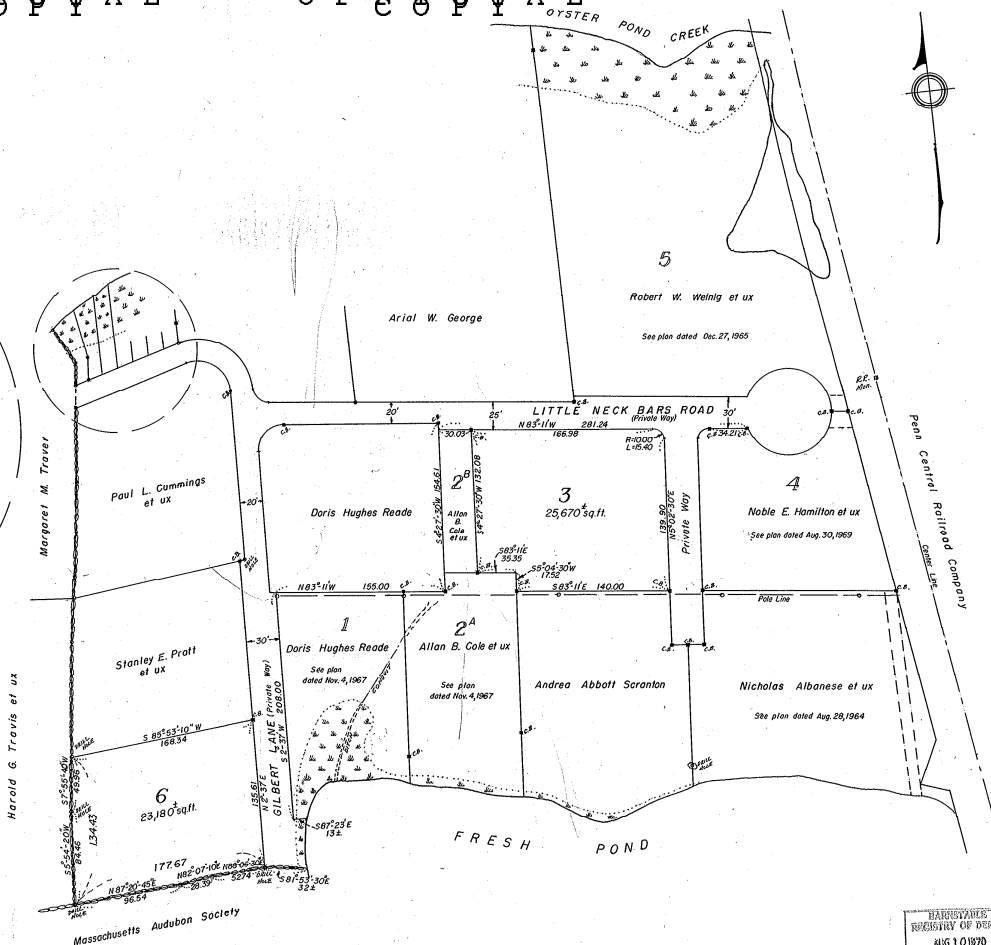
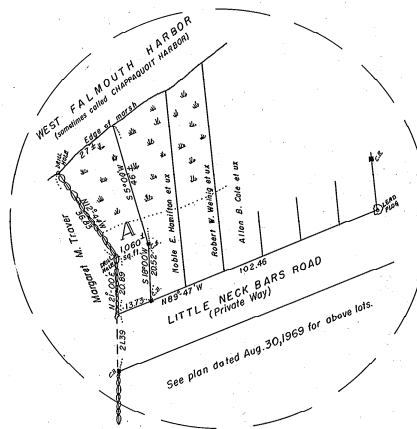
FRESH POND

EXHIBIT F

239-91
 OF ENANTIAL
 OF ENANTIAL

OF ENANTIAL
 OF ENANTIAL

1981



RECORDS
 AUG 10 1970
 10 40 a.m.
 RECORDED

PLAN OF LAND OF
 HAROLD G. TRAVIS ET UX
 WEST FALMOUTH, MASS.

Scale 1 inch = 50 Feet July 15, 1970

I certify that this plan was made in accordance with Falmouth Subdivision Regulations and that the permanent points shown on the plan are in existence on the ground.

Robert W. Griffin
 Reg. Land Surveyor
 16 Evangeline Rd.
 Falmouth, Massachusetts

"At a meeting of the Falmouth Planning Board held on August 10, 1970 the following was voted:
 'Approval under the subdivision control law not required.'
Harold G. Travis
Secretary

PLAN BOOK 239 - PAGE 91

EXHIBIT G

Meeting of Falmouth Planning Board
Town Hall, 3 Nov 1970 8 PM

Subdivision of Harlow property

The hearing was brief, we offered no objection to the division. Our only question was regarding any danger of blocking off the lane as a means of passage from the main road to the general beach areas. Planning Board chairman gave a firm statement that in his opinion this could NOT be done, since the way had been travelled and in use for many years. His impression was that we wanted to have it blocked off if possible, or would like to see it blocked off, but we corrected this with statement that we are anxious that it NOT be closed to passage.

We have detected a slight tendency to assume that because the railroad had forbidden the crossing to traffic, or "closed the crossing", that the RIGHT to cross had been eliminated. It would seem that this is not so, and that the way is still recognized as such. It was, of course, the chief route to Hog Island (Chapaquoit) and Black Beach (The marsh) before the bridge on Chapaquoit Road was built.

(note by Cecelia B. Fuglister, in attendance at the hearing
on behalf of the Bowerman family)

EXHIBIT H

705

486

George E. Dean its President this thirtieth day of
September A. D. 1948.

Sumner Crosby NOT
A N

THE FALMOUTH NATIONAL BANK

by

A

OFFICIAL

COPY

COPY

The Commonwealth of Massachusetts

BARNSTABLE,

ss.

September 30,

1948

NOT

NOT

Then personally appeared the above named George E. Dean

A N

A N

and acknowledged the foregoing instrument to be the free act and deed of The Falmouth National

Bank

OFFICIAL

OFFICIAL



before me

Sumner Crosby

Notary Public

My commission expires

May 5,

1955.

(see over for vote)

At a Special Meeting of the Board of Directors of The Falmouth National Bank duly held at its banking rooms on October 11, 1948 at 1 o'clock p.m. it was

VOTED: to ratify and approve the action of the president in executing and delivering a partial release dated September 30, 1948, of certain land in West Falmouth, being a part of the land described in a mortgage given by Virtue B. Gifford to The Falmouth National Bank dated March 26, 1934, and recorded with the Barnstable County Deeds, Book 501, Page 336.

A true copy, ATTEST:

Gordon Miller
Secretary of the Board of Directors

Gordon Miller
Secretary of the Board of Directors



Barnstable, ss., Received October 22, 1948, and is recorded.

I, Virtue B. Gifford, widow,

of Falmouth

Barnstable

County, Massachusetts,

being unmarried, for consideration paid, grant to Deborah Lawrence

of said Falmouth

with quitclaim covenants

~~to have~~ a certain lot or parcel of land situated in said Falmouth, Barnstable County, Massachusetts, in that part called West Falmouth,

(Description and encumbrances, if any)

lying Westerly from the State Highway known as Routh 28, and is bounded and described as follows: N O T N O T

Southeasterly by land of Albert S. Bowerman; Southwesterly by land now or formerly of Adelbert L. Bowman and Mary E. Bowman as indicated by the line of a stone wall; Westerly by the location of the New York, New Haven and Hartford Railroad; Northerly by Oyster Pond, I A so called; and Northeasterly by land formerly of Edmund C. Gifford as indicated by the line of a wall extending from said Oyster Pond to a stone post set by an old road or right of way.

An old road or right of way extends from said State Highway by or through land of said Albert S. Bowerman in a Westerly direction across the above described lot or parcel and across said railroad to other land of the grantor, and the grantor herein specifically reserves for herself, her heirs and assigns, and as appurtenant to said other land owned by her, the right to pass and repass on foot and with vehicles across and over the above described lot or parcel by means of said old road or right of way, and so much of the above described lot or parcel as is included within said old road or right of way is conveyed subject to the rights of the grantor and others who are or may become entitled thereto to pass and repass over the same on foot and with vehicles; and said lot or parcel is conveyed together with an existing right appurtenant thereto to pass and repass over said old road or right of way, on foot and with vehicles, in common with the grantor, her heirs and assigns, and others entitled thereto.

My title to the above described lot or parcel was acquired as heir of my father, Daniel Bowerman, Barnstable County Probate 14737. Reference may also be had to probate of the estate of Mary T. Bowerman, Barnstable County Probate 9354.

husband
wife

~~to have~~ said grantor all rights of ~~tenancy by the entirety~~ and ~~other interests therein~~

Witness my hand and seal this thirtieth day of September 1948

Virtue B. Gifford

The Commonwealth of Massachusetts

BARNSTABLE, ss. September 30, 1948

Then personally appeared the above named Virtue B. Gifford

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

Sumner Crosby

Notary Public - ~~for the State of Mass.~~

My commission expires May 5, 1955.

Barnstable, ss., Received October 22, 1948, and is recorded.

We, Adelbert L. Bowman and Mary E. Bowman, husband and wife, as tenants by the entirety, both of Falmouth Barnstable County, Massachusetts, ~~have conveyed~~ for consideration paid, grant to F. Stanley Bowman

1-48-00 Revenue Stamp Cancelled 9/30/48 1188
" " " " " "
" " " " " "
" " " " " "
" " " " " "
" " " " " "

EXHIBIT I

This mortgage is upon the statutory condition, and upon the further conditions:
That the mortgagor shall keep the buildings now or hereafter standing on said premises insured against fire and (when required by the mortgagee) also against other casualties and contingencies, in sums satisfactory to the mortgagee; and all insurance upon said buildings shall be for the benefit of, and first payable in case of loss, to the mortgagee, and the mortgagor shall deposit all of said insurance policies with the mortgagee.

O F F I C I A L O F F I C I A L
for any breach of which the mortgagee shall have the statutory power of sale.
C O P Y C O P Y

I, Marion Wheeler wife of said mortgagor
release to the mortgagee all rights of dower and homestead and other interests in the mortgaged premises.

Witness our hands and seals this fourteenth day of August, 1957

O F F I C I A L O F F I C I A L
C O P Y C O P Y
Irving R. Wheeler
Marion Wheeler

Commonwealth of Massachusetts

BARNSTABLE, SS. Provincetown, Mass., August 14, 1957

Then personally appeared the above named Irving R. Wheeler

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

William F. Silva
Notary Public

COMMISSION EXPIRES
JANUARY 24, 1965

Barnstable, ss., Received August 16, 1957, and is recorded.

I, Virtue B. Gifford, widow

of Falmouth, Barnstable County, Massachusetts,

being unmarried, for consideration paid, grant to Harold G. Travis and Elisabeth F. Travis, husband and wife, as tenants by the entirety and not as tenants in common

*

of Weston, Massachusetts

with quitclaim covenants

~~hereby~~ four parcels of land situated in that part of said Falmouth,
[Description and encumbrances, if any]

Barnstable County, Massachusetts called West Falmouth and said lots or parcels are bounded and described as follows:

PARCEL 1 Parcel 1 is bounded
EASTERLY by land of the New York, New Haven and
Hartford Railroad Co.;
SOUTHERLY by a Way sometimes known as Little Neck
Bars Road;
WESTERLY by land now or formerly of Arial W. George;
and
NORTHERLY by a small creek sometimes known as Oyster
Pond Creek.

PARCEL 2 Parcel 2 is bounded
NORTHERLY by said Way sometimes known as Little Neck
Bars Road above mentioned;
EASTERLY by land of said New York, New Haven and

see volume in volume 112, page 116.
See BOOK 3663 PAGE 304

Hartford Railroad Co.;
SOUTHERLY by a pond sometimes called Fresh Pond;
WESTERLY by a proposed 20 foot Way; and
WESTERLY, NORTHWESTERLY and
NORTHERLY by the intersection of said Way with said
First mentioned Way sometimes called Little Neck Bars Road.
C O P Y C O P Y

PARCEL 3

Parcel 3 is bounded
EASTERLY by said proposed 20 foot Way;
SOUTHERLY by land now or formerly of Edith C. Baker
by a line indicated by a stone wall on
the remains thereof;
WESTERLY by land now or formerly of Albert S. Bowerman
by a line indicated by a stone wall on the
remains thereof; and
NORTHERLY by land of Paul L. Cumings et ux.

PARCEL 4

Parcel 4 is bounded
SOUTHERLY by said Little Neck Bars Road;
WESTERLY by land formerly of Albert S. Bowerman
NORTHERLY by Chapaquoit Harbor, so called; and
EASTERLY by land now or formerly of Helen Richards
Bixby and Harry Irving Bixby

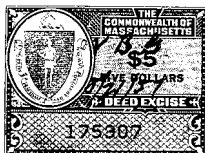
This parcel is conveyed subject to and there is excluded from the conveyance of this parcel all right, title and interest in a strip of land fifteen (15) feet in width extending from said road to Chapaquoit Harbor that may have been acquired by the said Paul L. Cumings et ux under and by virtue of my deed to the said Cumings et ux dated November 10, 1931,

and recorded with Barnstable County Deeds, Book 485, Page 398; and this parcel of land is conveyed subject to the condition that no buildings are to be erected upon any other grants of such fifteen (15) foot strips for boat landings.

So much of the land described in the foregoing parcels as is included in any road or Way, is conveyed subject to the right of all persons owning land abutting thereon and of all others who are legally entitled thereto to pass and repass over and to use the same for all purposes for which similar roads or Ways are commonly used.

Also granting as appurtenant to the parcels hereinbefore conveyed, in common with others who now are or may be entitled thereto, a right to pass with or without vehicles from the parcels herein conveyed over the Way leading from said land in a westerly direction to a road which runs south from the Chapaquoit Road, so called, as provided for in a right of way granted by Albert S. Bowerman to the grantor, recorded with said Barnstable County Deeds, Book 548, Page 284.

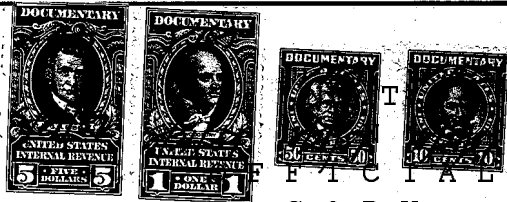
The above described parcels are hereby conveyed subject to any rights or easements granted to the Cape & Vineyard Electric Company and the New England Telephone and Telegraph Company to erect, operate or maintain lines for the transmission of electricity and intelligence, and also to any rights or easements granted to the Town of Falmouth to lay and maintain water mains or pipes therein.



981

4

U.S. REV. STAMPS IN THE AMOUNT OF \$6.60 WERE
AFFIXED TO THIS INSTRUMENT AND WERE CANCELLED.



NOT
AN
OFFICIAL
COPY

NOT
AN
OFFICIAL
COPY

husband of said grantor,
wife

release to said grantee all rights of tenancy by the curtesy and other interests therein.
dower and homestead

OFFICIAL
COPY

Witness my hand and seal this 21st day of August 1957

Virtue B. Gifford

The Commonwealth of Massachusetts

Barnstable,

ss.

August 21,

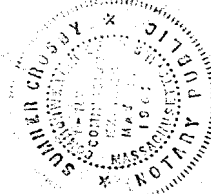
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Then personally appeared the above named Virtue B. Gifford

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

Sumner Crosby
Sumner Crosby Notary Public

My Commission expires May 12, 1962



Barnstable, ss., Received September 16, 1957, and is recorded.

EXHIBIT J

ROAD SITUATION RECAPITULATED TO 1967.

Black Beach - Harbor Head Ass'n

The Black Beach-Harbor Head Association came into formal existence after a meeting of residents held at the Drew cottage on August 28, 1949, but the same people had been participating from time to time jointly and informally since before World War II. The situations covered had related to policing the road and the placing of signs. Through the years since the association became organized, however, another project has loomed larger in our joint purpose; it is the maintenance of our roads. We all live on two private roads which have some status as public rights-of-way.

When the Paul Cumings completed their cottage in June 1931 on what was then known as "Old Chapoquoit Road", the way through the sand dunes was two ruts through deep drifted sand; a blind curve around one dune presented an ever-present danger of collision with any car coming in the opposite direction. Inevitably, many got stuck in the sand and had to be hauled out by a wrecking car. Thus, the safest way out (and "in" in reverse) was over the New Haven tracks and out to Route 28 (now 28 A) on the lane that passed close to the Bowerman homestead on the main road. Though this was a very round-about route to the Bath House, few people actually used the Bath House then, and never on Saturday afternoons and Sundays, when a very objectionable crowd from "off cape" seemed to take over.

Following the 1938 hurricane, which completely destroyed the Bath House, the present Bath House was erected and opened in 1939. To Mr. Cumings, who designed it free of charge for the Bowermans, the entire community since has been everlastingly grateful. To

assure its financial success, but with membership restrictions, more of us agreed to patronize it instead of going over the dunes to swim as we usually had done in the past. It was then that more people wished for a better road through the dunes, but it was ^{twelve}~~twenty-two~~ years in coming.

In addition to the hazard of being stuck in the dunes there was a further menace at what is now the junction of the present Little Neck Bars Road with the Black Beach Hills Road - a place then known as "the triangle". It was a real triangle in the center, and high with scrub growth that obstructed all vision for turning the corners, for both sides of the roads were also high in similar growth. The main problem, however, was the use of the road by trippers seeking the good beaches and privacy at the inlet. Thus, funds were collected informally, and a policeman placed near the triangle to guard the ^{corner}~~place~~ where the two roads came together from dune and the railroad track entrances.

World War II interrupted the system. Thus it was not until gasoline rationing went off in 1946 that the guard was restored. In that year Mr. Jesse A. Drew had purchased from the Bowermans the cottage nearest the triangle. Although he did not own the triangle nor the part of the Black Beach Hills Road on which his house faces, he nevertheless paid for bulldozing the triangle out of existence and for gravel to fill up the holes on Black Beach Hills Road as well as for cutting the growth along the stone wall.

Mr. Drew does own entirely the right-of-way that runs alongside his house ~~and~~ bordering the head of the harbor, and except in unusual circumstances he has always maintained it at considerable cost. It is a section which constantly sinks, no matter how much gravel is

put on it. The next rain produces a long puddle, and ensuing storms make it worse. Unfortunately it is a section of road that has to be used by every resident of the Harbor Head ~~area~~. While the Drews themselves have their own driveway entrance off the road, and thus have a personal concern in keeping it in condition for themselves as well as their neighbors, heavy trucking over the years has made it somewhat difficult. Remodeling and building projects at the Drews, as well as several additional houses at Harbor Head, have continued the unusual wear and tear, but the worst has come from ~~the~~ two projects of filling in lands below. A succession of ten ton trucks loaded with gravel and fill passing over it hour after hour and day after day till the work has been finished have added their toll. Thus, it is possible that some means will be explored in the future for restricting the weight of the vehicles, unless prior agreements are made with the owner for repairing the damage.

It was in the 1951 season that Mr. Paul Cumings volunteered his services for collecting from house owners and regular tenants a sum sufficient for bulldozing and widening the way through the sand dunes. Our minutes, however, make no mention of the trouble he now recalls in obtaining the necessary permission to do it, since the Bowerma (and now their estates) own this section of road. It was only when they were assured that these improvements would be made and maintained without cost to them that they finally agreed. Subsequently, with \$350 in hand (\$25 each from 14 families), Mr. Cumings contracted with John Fish to widen the dune road and partially straighten the curve and spread all with gravel from the Champoquoit Road entrance as far as the old triangle. Again, private work by a number of families greatly improved most of the entire road system.

In the next year, 1952, Mr. Fish advised that the only way to overcome the deep hole that developed at the joining of the sand dune road with Chapoquoit Road was to build it up with gravel and anchor this "apron" with hard top. Estimate \$150. Since we had \$125 then in our treasury and the promise of \$25 more, the work was ordered and finished shortly thereafter - and so was our treasury! Our 1954 minutes again report the road "full of holes."

In 1955 the way over the railroad tracks was suddenly closed by the New Haven railroad following an accident there earlier in the season in which a child had been killed. A resolution was framed for the association applauding the action, and subsequently forwarded to Patrick McGinnis, the railroad's president. The dune road thus became our only entrance, and subsequently adopted the name found on Falmouth Town Maps for a part of it - Little Neck Bars Road. Passing through Harbor Head, it ^{now} is dead end at the railroad track,

In 1958, because of inadequate water pressure, an effort was renewed to secure a larger water pipe to service the sections where town water was then already in use. Preliminary work on this had been begun by Mr. John Hall as far back as 1949, when an article put in the warrant for Town Meeting as Article 32 was defeated. Mr. Bowerman now proved extremely helpful by stating that the origin of our water system had been a W.P.A. project during the depression and paid for with federal funds. The town had taken over the system afterward. Therefore, any replacement necessary was the responsibility of the Town and not of the residents! Thereafter, the town Water Department became very cooperative with Mr. Harold G. Travis, who assumed the responsibility for obtaining the surveys, new right-of-way, and

legal work this entailed. The project, complete in 1959, was an eight inch deeply laid water main that replaced the old two inch caste iron pipe formerly running close to the surface - and new hydrants bringing to a total of four, ^{the number} installed this side of the tracks. A \$50 assessment on each house thus served (with cost of individual connections borne by each owner) not only covered the costs of the survey and legal work but also the restoration of the road where damage occurred.

In 1959 also, a five member road committee was established by vote of the association; 2 members from Black Beach Road; 2 members from Harbor Head, and a chairman, who was Mr. Ralph Webber. The committee was instructed to maintain both roads in "passable condition" from the last house on each road, and if necessary, after consulting the treasurer, to make recommendations for "an extra assessment (to) be collected from the members (of the association.) (July 1959) The committee was asked to report the next year.

Mr. Webber reported at the 1960 meeting that it had been found that with two resurfacings with gravel each year, the roads could be successfully maintained. No additional assessment was requested. The 1961 minutes make no mention of roads, but in 1962, in the absence of the chairman Mr. Drew made a verbal report, ^{he mentioned} His own success over a number of years in laying the dust and holding the surface at his corner with applications of calcium chloride, ^{This} had prompted him to suggest that some of his neighbors finance the cost of applying salt to their sections as well. Thus, a considerable section of both roads from the triangle had been treated at private expense, ^{In that year although the private donations were} the additional funds collected by the treasurer, ^{they were} not recorded in the figures. ^{of expense by the association.} The success of this experiment had

been proved by the way the road had lasted so far through the season. Pursuant to ^{Mr. Drow's} ~~his~~ report, the association then voted "to have the entire roads treated in the spring (1963) using association funds." (August 18, 1962) Although Mr. Drow recommended the raising of the dues to meet the additional costs, the treasurer deemed this unnecessary, at least for that year.

Subsequently, heavy rains which apparently came in October caused such damage ^{to the road} that the Travers, coming down to close their cottage, found it almost impassable. ^{The Drows were in London and} and so informed Mr. Drow in ^{received the news by letter but} ~~a letter he wrote him in London.~~ ^{Mr. Travers} The truth of ~~his~~ report was certainly validated when the Drows returned on November 7th.

On authorization of the president, Mr. Gardiner, and a majority of the road committee, who subsequently were down for the day, Grover Bourne was hired to restore the road. Spring work proceeded as usual with the entire road treated with calcium chloride as voted at the 1962 meeting. This seems to bring the subject of the road up to the ~~present~~ ^{minutes of the 1963 meeting.}

Respectfully submitted, ~~Respectfully submitted,~~

Gwendolen F. Drow

Gwendolen F. Drow, Secretary

EXHIBIT K

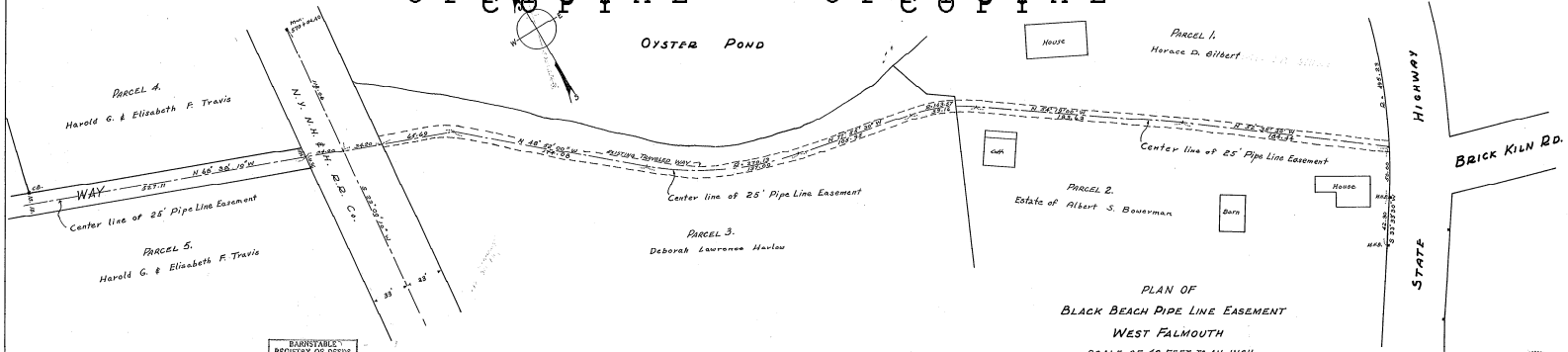
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1959 Black Beach Pipe Line Easement Sheet 1 of 4

Scale 1" = 40 ft.



BARNSTABLE
REGISTRY OF DEEDS
OCT 8 - 1959
S. HOS. M. F. M.
RECORDED

PLAN OF
BLACK BEACH PIPE LINE EASEMENT
WEST FALMOUTH
SCALE OF 40 FEET TO AN INCH
APRIL, 1958
CHARLES A. WHITE, C.E.



PLAN BOOK 151-PAGES

EXHIBIT L

