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RECEIVED

OCT 19 2015

**PLANNING BOARD
GRAFTON, MA**

October 15, 2015

Sargon Hanna
Chairman
Grafton Planning Board
Grafton Municipal Center
30 Providence Road
Grafton, MA 01519

RE: 12 Clearview Street, Grafton (the "Property")

Dear Chairman Hanna and Members of the Planning Board:

I am writing to inform you that my client (Westerly Side Grafton, LLC) has submitted an application requesting a modification of what is believed to be a valid subdivision. The subdivision is located off of North Street and Clearview Road. As you will see from the analysis set forth below, the subdivision of land was originally approved by the Grafton Planning Board in 1953. The application for modification is submitted pursuant to and in accordance with the provisions of MGL Ch. 41 s. 81 W and the rules and regulations of the Grafton Planning Board. The following analysis is submitted to provide a background of the permitted use of the Property, the dimensional requirements of the Proposed Use (residential lots), the approval of the Subdivision, and the applicable standards for the design and eventual construction of the Subdivision. I presume Town Counsel may be called upon to render an opinion as to the validity of the hereinafter described subdivision.

The Property

The Property is shown on a plan of land entitled "Plan of Property Owned By Abraham Spungin in Grafton Mass." dated 1946 and recorded with Worcester District Registry of Deeds (the "Registry") in Plan Book 139, Plan 23 (the "Plan"), excepting the parcel transferred by deed recorded with the Registry in Book 3643,

Page 291. As shown on the Plan, the Property comprises approximately 29.5 acres of land, excepting said previously transferred parcel. The Property is shown on Grafton Assessors' Map 47 as Lot 48. According to the records of the Grafton Board of Assessors and the Registry, the Property is owned by the applicant, Westerly Side Grafton, LLC by Deed dated November 21, 2008 and recorded with the Registry in Book 43570, Page 163. Copies of the Plan, field card and Deeds are attached for your reference.

Currently, there is one (1) single-family dwelling on the Property. According to the Grafton Zoning Map adopted October 15, 2012, the Property is situated within the Low Density Residential (R-40) Zoning District. According to Section 3.2.3.1 of the Grafton Zoning By-Law as amended through May 11, 2015 (the "By-Law"), detached one-family dwellings are permitted uses in the R-40 Zoning District. According to the field card, the dwelling known as and numbered 12 Clearview Street was built in 1953. We believe that Clearview Street has provided access to the dwelling since that time. Clearview Street appears on the Town of Grafton Street Map updated 11/2013. Copies of the street map, a GIS map, and a Google Maps aerial image that depict the Property, the existing dwelling located at 12 Clearview Street, and the way that provides access to said dwelling from North Street are attached for your reference.

Proposed Use

The Subdivision is comprised of twenty (20) proposed single-family detached residential dwellings within a twenty-two (22) lot subdivision on a site located off of North Street in the Town of Grafton, Massachusetts (the "Town"), as shown on a plan of land entitled "Plan of House Lots Owned By Oliver Christensen Et. Ux. Grafton Mass." dated 1953 and recorded with the Registry in Plan Book 202, Plan 33 (the "Subdivision Plan"). The Subdivision Plan depicts a residential subdivision consisting of Lots 1 through 22 and Clearview Street, and was approved by the Grafton Planning Board (the "Board") by endorsement dated July 30, 1953. Two (2) dwellings within the Subdivision have been previously constructed: 12 Clearview Street, which is shown as Lot 13 on the Subdivision Plan, and 81 North Street, which is shown as Lot 1. The Proposed Use thus entails the construction of twenty (20) single-family detached residential dwellings, each on a separate lot, with associated roadway, utility and drainage infrastructure.

Dimensional Requirements

According to Section 3.2.3.2 of the By-Law (Intensity of Use Schedule), the minimum lot area for land within the R-40 Zoning District is 40,000 square feet, and the minimum lot frontage is 140 feet. The undeveloped lots shown on the Subdivision Plan—which contain approximately 11,979-25,110 square feet, with frontage of 100-186 square feet—do not comply with current zoning, and cannot be

built as laid out on the Subdivision Plan. It is however my client's position that Lots meeting the dimensional requirements of the current zoning by-law can be used for single family residential structures.

Subdivision Approval

The object of the subdivision control law in Massachusetts and the task of planning boards is "to ensure, by regulating their design and construction, safe and efficient roadways to lots that do not otherwise have safe and efficient access to an existing public roadway." Gates v. Planning Board of Dighton, 48 Mass. App. Ct. 394, 400-401 (2000). The adequacy of the roadways that give vehicular access to subdivision lots "is precisely what the subdivision control is about." Id. at 401. As set forth in Section 81M of G.L. c. 41, §§ 81K-81GG (the "Subdivision Control Law")¹:

It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

When the Board endorsed the Subdivision Plan on July 30, 1953, it had not yet adopted Rules and Regulations Governing the Subdivision of Land ("Subdivision Regulations") under the Subdivision Control Law², nor had the Massachusetts Legislature's comprehensive 1953 revision to what is now known as the Subdivision Control Law become effective.³ Notwithstanding, Section 81K provides that the designation "the subdivision control law" "shall, when apt, include corresponding provisions of earlier laws", and Section 81GG provides, in pertinent part, that:

Any planning board having powers of subdivision control under corresponding provisions of earlier laws shall have all of the powers and be subject to all of the duties of a planning board with respect to subdivision control under sections eighty-one K to eighty-one FF, inclusive, without any further action by such city or town.

¹ Unless otherwise indicated, all statutory references herein are to the Subdivision Control Law.

² The Town's Subdivision Regulations dated May 11, 2009 recite in Section 6.7 that such regulations supersede the Subdivision Regulations that "became effective on January 19 1955", as amended.

³ See St. 1953, c. 674, s. 7; Johnson, Richard B. (1954) "Chapter 2: Conveyancing," Annual Survey of Massachusetts Law: Vol. 1954, Article 8 (Subdivision Control Law approved by Governor on July 4, 1953, and took effect on October second).

Accordingly, we believe that the Board was, when it reviewed and endorsed the Subdivision Plan, duly authorized to exercise the subdivision control powers that were conferred on planning boards under the Legislature's 1936 expansion of subdivision control ⁴, as amended, and regulations pertaining to roadway design and construction, utility and drainage infrastructure, etc. (the "Prior Rules and Regulations"), in order to ensure that Clearview Street would provide safe and efficient access to the lots shown on the Subdivision Plan. The Subdivision Plan was, therefore, endorsed by the Board within the meaning of Section 81L under the Subdivision Control Law and the Prior Rules and Regulations on July 30, 1953.⁵ Upon the register of deeds' acceptance of the Subdivision Plan for recording on December 10, 1954, the Board's endorsement thereof became "final and conclusive on all parties, subject to the provisions of section eighty-one W." G.L. c. 41, § 81X.

Conclusion

For all of the foregoing reasons, we believe that Clearview Street may be constructed as depicted on the Subdivision Plan, in accordance with section 81O, which provides, in pertinent part, that: "After the approval of a plan the location and width of ways shown thereon shall not be changed unless the plan is amended accordingly as provided in section eighty-one W".⁶ Thus, in the absence of a proposal to amend the Subdivision Plan, the location and width of Clearview Street shall not be changed.

Pursuant to Section 81Q, after submittal of a definitive plan to a planning board, "the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of the submission of such plan." Given that the Board had not yet adopted Subdivision Regulations under the Subdivision Control Law at the time of the submission of the Subdivision Plan, as discussed above, we believe that the Board may impose reasonable requirements as to the design and construction of Clearview Street, in the location and width shown on the

⁴ See 1936 Mass. Acts 211, § 4.

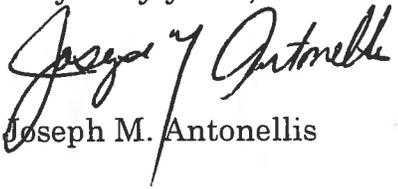
⁵ " 'Certified by [or endorsed by] a planning board', as applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, shall mean, bearing a certification or endorsement signed by a majority of the members of a planning board, or by its chairman or clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the register of deeds and recorder of the land court, signed by a majority of the board."

⁶ "All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section." G.L. c. 41, § 81W.

Subdivision Plan, and the installation of utility and drainage infrastructure, etc. and the Board's then-existing subdivision rules.

I welcome the opportunity to discuss the above with you and Town Counsel, and as you will see from the revised plans as submitted, my client has taken every reasonable effort to provide a revised subdivision that incorporates many of your Board's presently enacted rules and regulations.

Very truly yours,



Joseph M. Antonellis

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OCT 19 2015

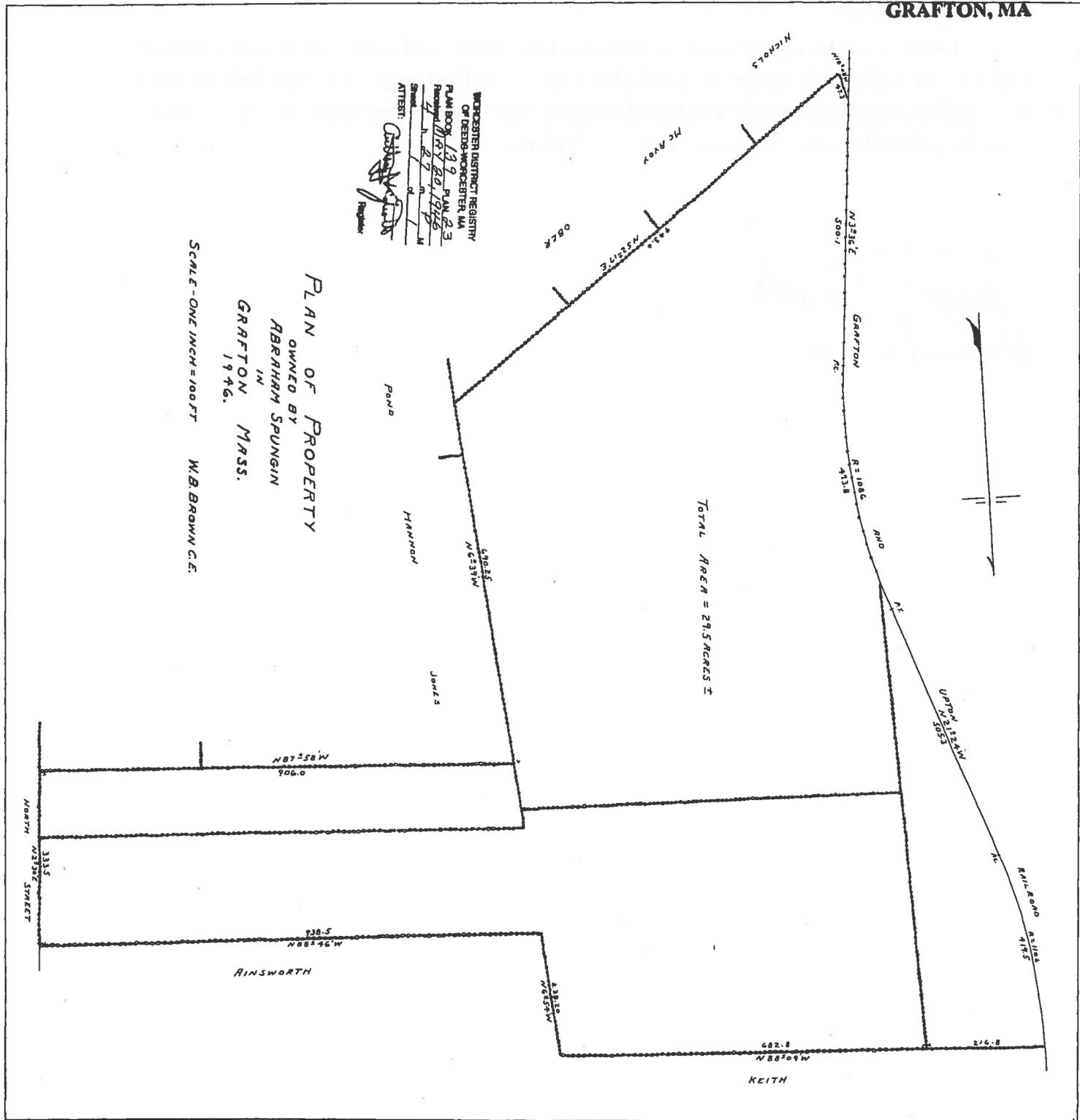
PLANNING BOARD
GRAFTON, MA

WORCESTER DISTRICT REGISTRY
OF DEEDS-WORCESTER, MA
PLAN BOOK 139 PLAN 23
Registered BY RA 1946
21 27 1946
Shelton M
ATTORNEY:
Robert J. Spungin
Register

PLAN OF PROPERTY
OWNED BY
ABRAHAM SPUNGIN
IN
GRAFTON MASS.
1946.

SCALE - ONE INCH = 100 FT. W.B. BROWN C.E.

TOTAL AREA = 29.5 ACRES ±

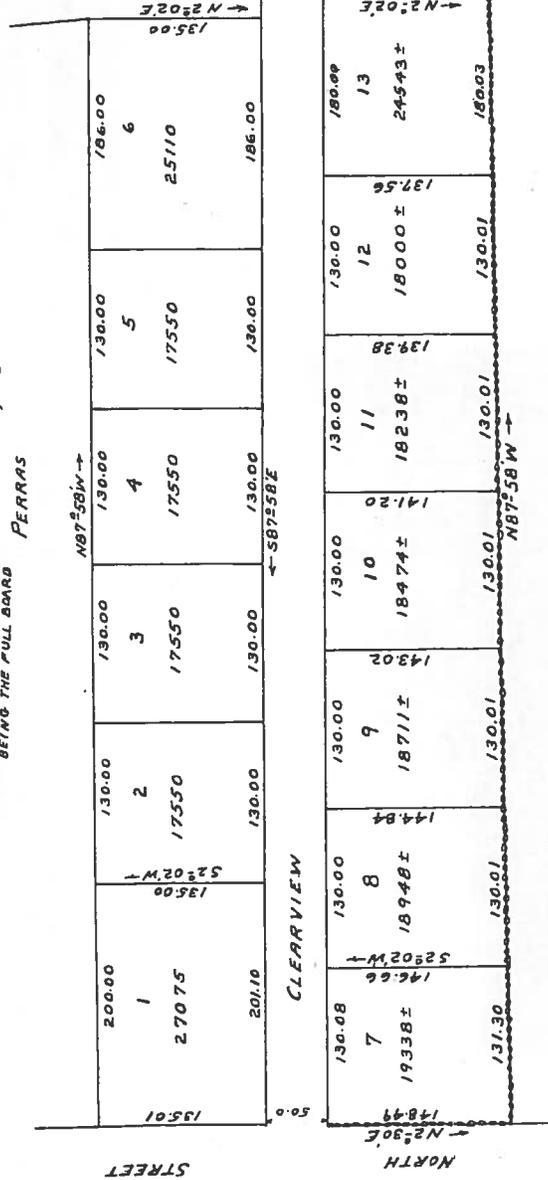


PLAN OF HOUSE LOTS OWNED BY
OLIVER CHRISTENSEN ET. UX.
 GRAFTON MASS.
 1953.

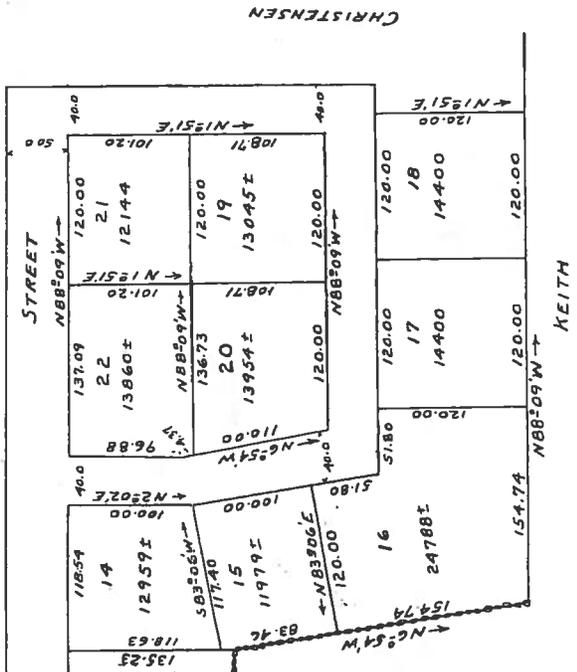
SCALE - ONE INCH = 60 FT.

M.B. BROWN C.E.

APPROVED BY
 [Signature]
 TOWN OF GRAFTON PLANNING BOARD JULY 30, 1953
 BEING THE FULL BOARD
 PERRAS



REGISTERED DISTRICT REGISTER
 OF DEEDS - WORCESTER MA
 PLAN BOOK 502 PLAN 33
 Registered DEC 20, 1953
 Sheet 157 m
 ATTEST: [Signature] Register



PARCEL INFORMATION

Owner:
 WESTERLY SIDE GRAFTON LLC
 Address:
 117 WATER STREET
 MILFORD MA 01757

Use Code	101	Sale Price	100	Book	49570	Road Type	P	Maped Date	02/02/2006
Tax Class	T	Sale Date	12/04/08	Page	163	Rd Condition	G	Meas Date:	
Lot/Land Area	29.50	Sale Type	P	Get/Deg		Water	IW	Collect Id:	CE
Total Land Area	29.50	Sale Valid	F	Get/Deg		Sewer	SR	Collect Id:	

RESIDENCE INFORMATION

Sty/B: RN 101 Rooms: 8 Main Fin Area: 2404 Age: 1978
 Story Height: 1.00 Bedrooms: 3 Up Fn Area: Bsmt Area: 2404
 Room: G Full Baths: 2 Addn Bn Area: Hl Bsmt Area:
 Ext Wall: WS Half Baths: Urfin Area: Bsmt Grade:
 Mass/Bath: 0 Tot Fin Area: 2404
 Foundation: CN Bath Qual: T RCNLD: 213847
 Heat Type: FA Ext Kitch: Year Built: 1978 Mkt Adj:
 Flr Type: G Grd: 1953 Sound Value:
 Fireplace: 2 Bsmt Gar Cap: 2 Condition: A Att Str Vail:
 Optnl AG: N Bsmt Gar SF: 588 Pct Complete: Att Str Vail:
 Att Gar SF: %Good P/F/E/R: III74

Porch Type
 P Porch Area 160
 W Porch Grade Factor 95

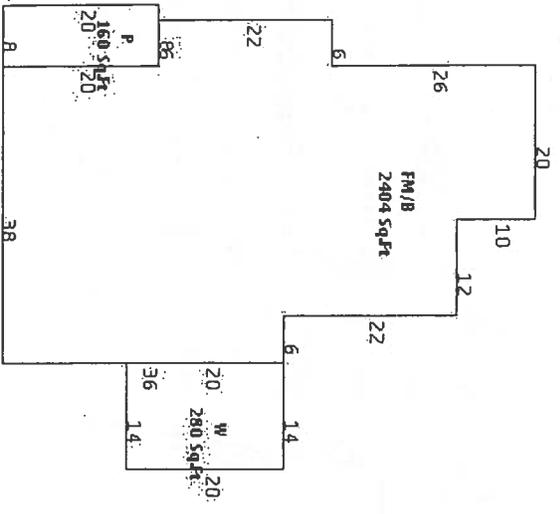
LAND INFORMATION

Seg	Type	Code	Method	SqFt	Acres	Intun/N	Value	Class
1	P	101	S	40000	0.000		110,656	
2	S	101	S	40000	0.918		38,729	
3	R	101	S	1204870	27.660		337,363	

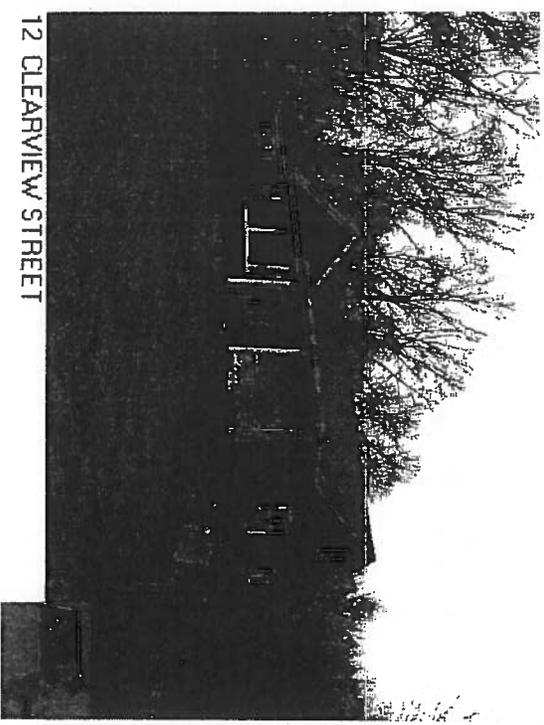
VALUATION INFORMATION

Current Total:	700,500	Bldg:	213,800	Land:	486,700	MktLnd:	486,700
Prior Total:	718,600	Bldg:	194,400	Land:	524,200	MktLnd:	524,200

SKETCH



PHOTO





2008 00130657

Bk: 43570 Pg: 163

Page: 1 of 3 12/05/2008 03:17 PM WD

DEED

Linda F. Gosselin, as she is Trustee of Storm Front Realty Trust, under a Declaration of Trust dated March 23, 1998, recorded with Worcester District Registry of Deeds, Book 19750, Page 341, with a usual place of business in Grafton, Massachusetts, for consideration paid, and in full consideration of less than \$100.00, grants to Westerly Side Grafton, LLC, a Massachusetts limited liability company, with a usual place of business at #117 Water Street, Milford, Massachusetts 01757, with quitclaim covenants:

The land, together with the buildings thereon, located in Grafton, Worcester County, Massachusetts, on the westerly side of the road known as North Street,

bounded Northerly by land now or formerly of Ainsworth and by land now or formerly of Frye;

bounded Westerly by land now or formerly of the Grafton and Upton Railroad, Southerly by land now or formerly of Harrington L. Nichols and land now or formerly of Jones;

bounded Easterly by land now or formerly of Mary L. Putnam, of Derrick, and of Miller, Southerly again by land now or formerly of Miller, Easterly and Southerly by land now or formerly of Ellison, and Easterly by said North Street.

Consisting of 29 acres, more or less, shown on a plan entitled "Plan of Property Owned by Abraham Spungin in Grafton, Mass., 1946" and recorded in the Worcester County Registry of Deeds, Plan Book 139, Plan 23, excepting the parcel transferred by deed recorded at Book 3643, Page 291.

12 Clarendon Street, Grafton, MA

318

guf

Being the same premises described in a deed from Dorothy M. Christensen to Linda F. Gosselin, Trustee of Storm Front Realty Trust, dated October 12, 2005, and recorded with said Deeds, Book 37547, Page 169.

Together with and subject to mortgages, easements, rights, restrictions, reservations, conditions, orders and agreements of record, in so far as the same are still in force and effect, including:

(a) Mortgage from Linda F. Gosselin, Trustee of the Storm Front Realty Trust, to Marvin E. Hill, Trustee of the M. Hill Companies, dated October 12, 2005, and recorded with said Deeds, Book 37547, Page 173.

(b) Assignment of Rents by and between Linda F. Gosselin, Trustee of the Storm Front Realty Trust and Marvin E. Hill, Trustee of the M. Hill Companies, dated October 12, 2005, and recorded with said Deeds, Book 37547, Page 190.

(c) UCC Financing Statement by and between Linda F. Gosselin, Trustee of the Storm Front Realty Trust, and Marvin E. Hill, Trustee of the M. Hill Companies, dated October 12, 2005, and recorded with said Deeds, Book 37547, Page 197.

(d) Mortgage from Linda F. Gosselin, Trustee of the Storm Front Realty Trust, to Marvin E. Hill, Trustee of the M. Hill Companies, dated December 22, 2006, and recorded with said Deeds, Book 40399, Page 318.

(e) Mortgage from Linda F. Gosselin, Trustee of the Storm Front Realty Trust, to Barbara J. Noel, dated December 22, 2006, and recorded with said Deeds, Book 40400, Page 1.

(f) Mortgage from Linda F. Gosselin, Trustee of the Storm Front Realty Trust, to Hill Financial Services Company, dated November 7, 2008, and recorded with said Deeds, Book 43570, Page 160.

The undersigned hereby certifies (a) that Storm Front Realty Trust is in full force and effect and has not been amended, rescinded or terminated; (b) that the undersigned is the sole trustee of the Trust; (c) that the undersigned has been directed by all of the beneficiaries of said Trust to execute, seal, acknowledge and deliver this deed; and (d) that all of the beneficiaries are of age and competent.

Witness my hand and seal this 21st day of November, 2008.

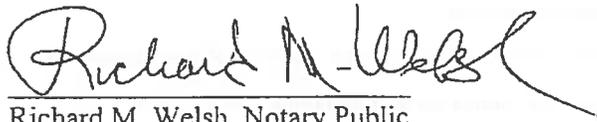


Linda F. Gosselin, Trustee of
Storm Front Realty Trust

COMMONWEALTH OF MASSACHUSETTS

County of Worcester, SS.

On this 21st day of November, 2008, before me, Richard M. Welsh, the undersigned Notary Public, personally appeared Linda F. Gosselin, proved to me through satisfactory evidence of identity, which was based on my personal knowledge of her identity, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Trustee for Storm Front Realty Trust, a Massachusetts Trust.



Richard M. Welsh, Notary Public
My commission expires 6/13/2014

ATTEST: WORC. Anthony J. Vigliotti, Register

A true record
Attest

3643

291

Andrew K. Stagner
Clerk

Recorded Dec. 10, 1954 at 3h. 26m. P. M.

■ END OF INSTRUMENT ■

WE, OLIVER CHRISTENSEN and DOROTHY M. CHRISTENSEN, husband and wife
as tenants by the entirety, both formerly of Worcester, now

of Grafton Worcester County, Massachusetts,

~~being unmarried~~, for consideration paid, grant to ELMER E. ELLISON, JR. and MARJORIE
A. ELLISON, husband and wife, as tenants by the entirety, both

of said Grafton

with warranty covenants:

the land in Grafton, Worcester County, Massachusetts on the westerly side of
(Description and encumbrances, if any)
North Street, bounded and described as follows:

BEGINNING at a point in the westerly line of North Street, said point
being the northeasterly corner of land now or formerly of Ferras and the
southeasterly corner of the tract herein described;

THENCE by the westerly line of North Street N. 2°30'E. one hundred
thirty-five and one hundredth (135.01) feet to the southerly line of a private
street known as Clearview Street;

THENCE by the southerly line of said Clearview Street N. 87° 58'W.
two hundred one and ten hundredths (201.10) feet;

THENCE by other land of grantors S. 2° 02'W. one hundred thirty-five (135)
feet to land now or formerly of Ferras;

THENCE by land now or formerly of Ferras S. 87°58'E. two hundred (200)
feet to the westerly line of North Street and the point of beginning.

Containing 27,075 square feet of land, more or less.

Said premises are conveyed together with a right to pass and repass
over that section of Clearview Street which abuts the above described tract on
the north, between the westerly line of the described premises and said North Street.

Being part of the premises conveyed to us by deed of Abraham Spungin
dated April 26, 1946, recorded with Worcester District Deeds, Book 2999, Page 252.

Said premises are part of plan of property owned by Abraham Spungin in
Grafton, Mass., 1946, W.B. Brown, C.E., recorded in said Deeds, Plan Book
139, Plan 23, and are shown as lot on plan by said Brown, approved by the Planning
Board and recorded with said Deeds, Plan Book 202 - Plan 33 .

3648

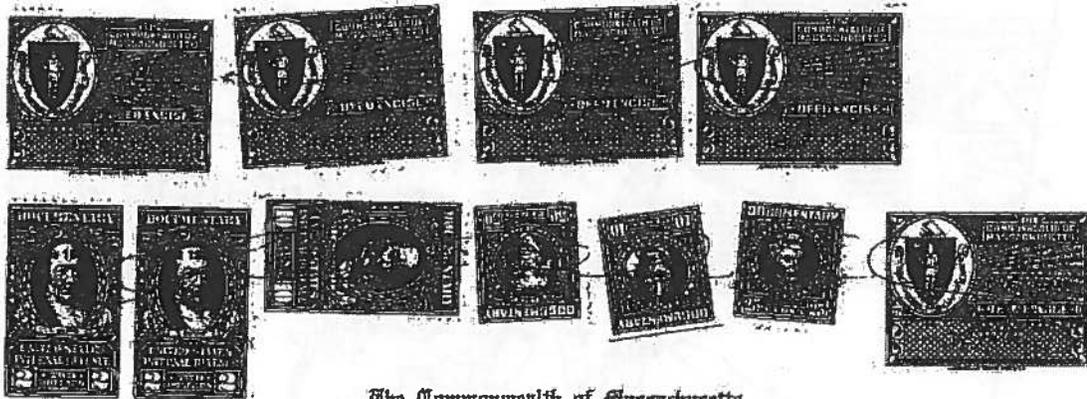
292

husband- of said grantor,
wife

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

Witness our hands and seals this 10th day of December 19 54

Oliver Christensen
Oliver Christensen



The Commonwealth of Massachusetts

Worcester

ss.

10 December

19 54

Then personally appeared the above named

Oliver Christensen

and acknowledged the foregoing instrument to be his

free act and deed before me

Rufus B. Dunbar
Notary Public - Massachusetts
RUFUS B. DUNBAR
NOTARY PUBLIC
MY COMMISSION EXPIRES 17 MARCH 1955

Recorded Dec. 10, 1954 at 4h. 34m. P. M.

■ END OF INSTRUMENT ■

I, Carmine J. Festa,

holder of a mortgage

from Warren C. Lessor and Margaret M. Lessor

to me

dated October 22, 1954,

recorded with

Worcester

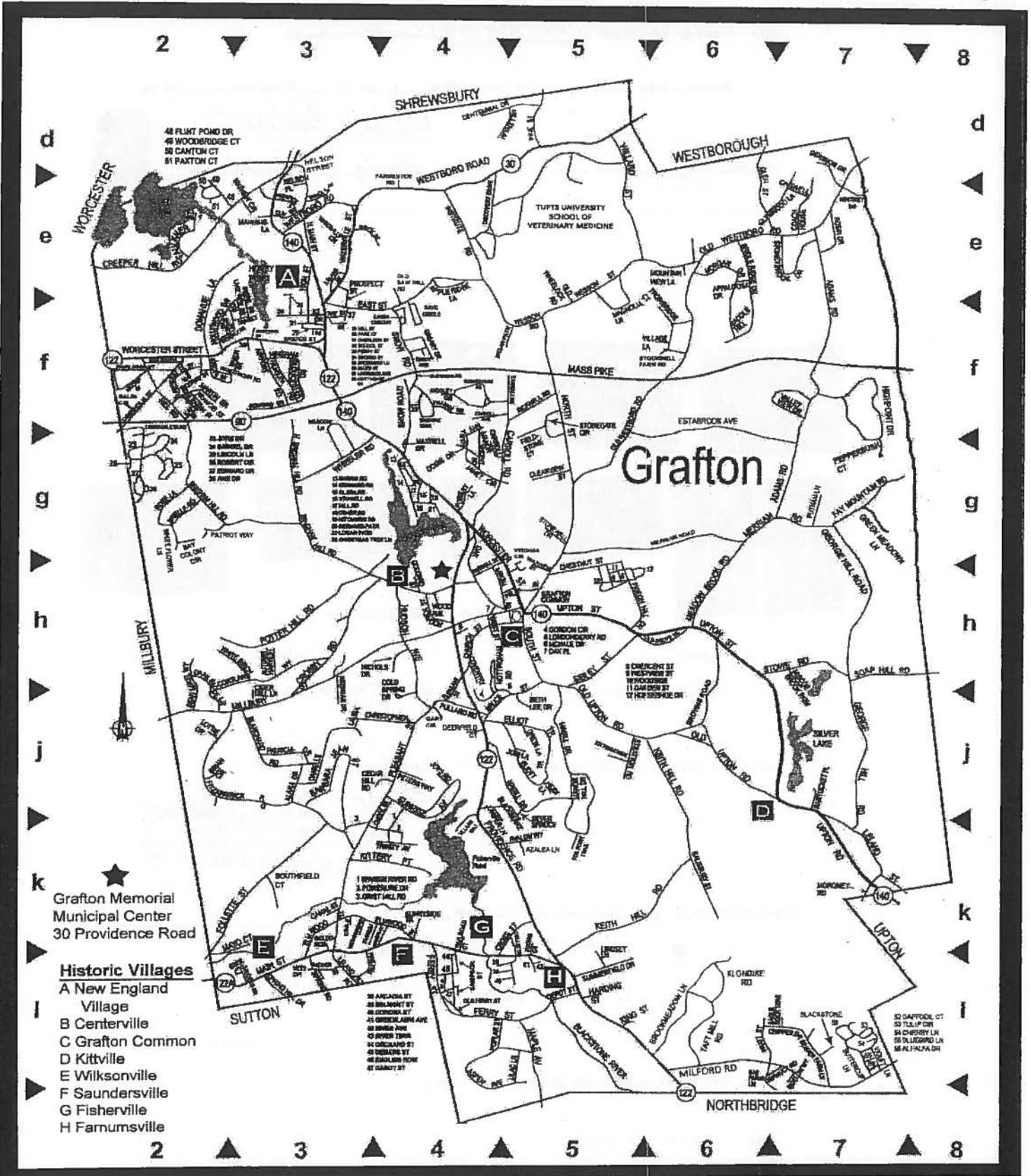
County Registry of Deeds

Book 3630

, Page 500

, acknowledge satisfaction of the same

Town of Grafton, Massachusetts - Street Map*



Street list on back of map.

**For reference only.
Not an official street map.
Updated: 11/2013*

GIS Map



Property Information

Property ID 110/047.0-0000-0048.0
 Location 12 CLEARVIEW STREET
 Owner WESTERLY SIDE GRAFTON LL

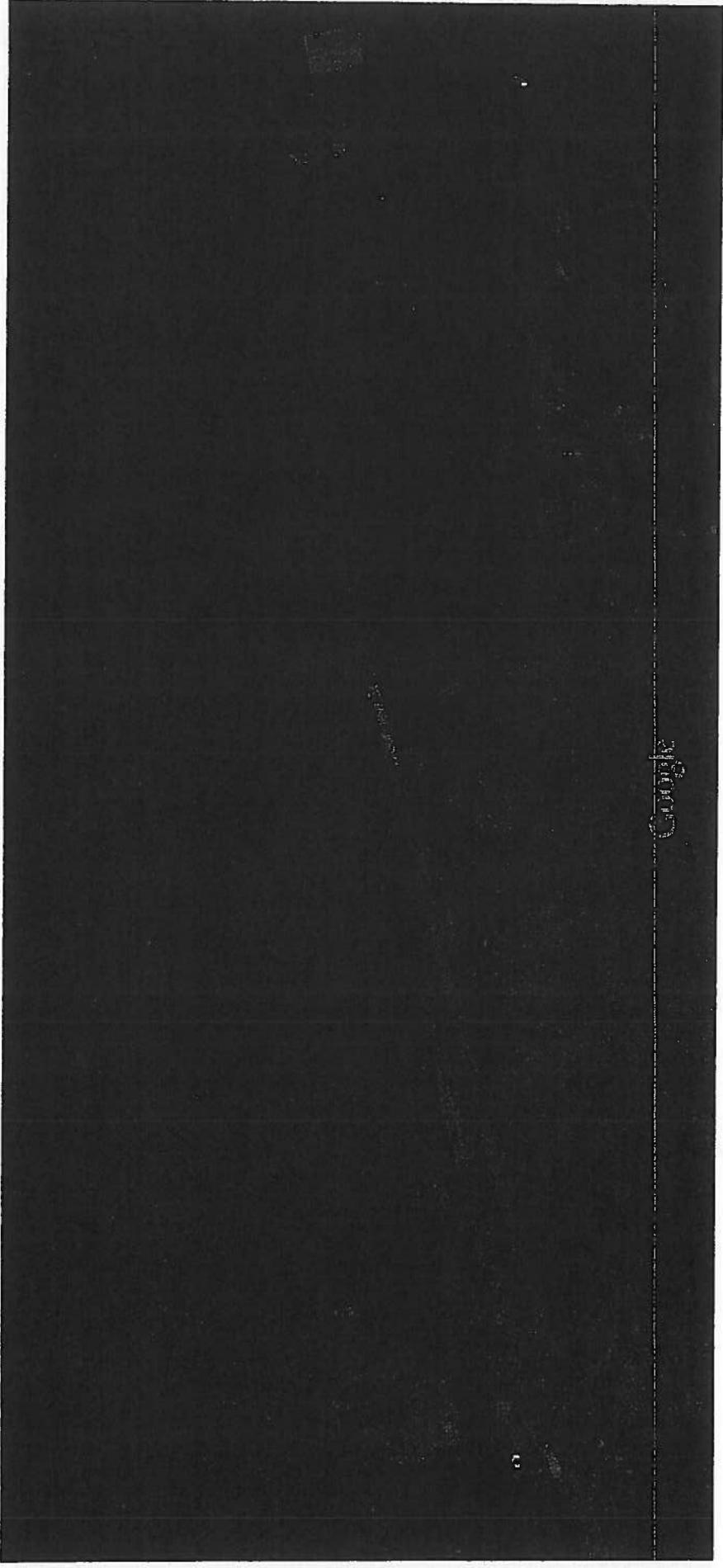


**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

The Town makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Parcels updated December 31, 2013





Imagery ©2015 Google, Map data ©2015 Google 50 ft