TOWN OF GRAFTON

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TOWN CLERK

Donna M. Girouard
Town Clerk

2016 00029215
Bk: 55093 Pg: 26
Page: 1 of 19 03/24/2016 01:16 PM WD

CERTIFICATE OF NO APPEAL

APPROVAL:	PLANNING BOARD Modification of Definitive Subdivision Plan "Grafton Hill" Subdivision
PETITIONER:	Westerly Side Grafton, LLC 117 Water Street, Milford, MA 01757
OWNER:	Westerly Side Grafton, LLC 117 Water Street, Milford, MA 01757
DEED REFERENCE:	12 Clearview Street, Grafton, MA Assessors Map 47, Lot 48 Book 43570, Page 163 Worcester District Registry of Deeds

This is to certify that a copy of the Decision of the Planning Board of the Town of Grafton for a Modification of Definitive Subdivision Plan on property located at 12 Clearview Street, Grafton, MA. Said property is located in Residential (R-40) zoning district was received and filed in the Office of the Town Clerk on February 10, 2016 at 12:18 P.M.

No Notice of Appeal of the Decision was filed within the twenty days next, the appeal period ending on March 1, 2016.

A true copy,
Attest:
(Seal)

Donna M Girouard
Town Clerk – Grafton, Massachusetts

DECISION
GRAFTON PLANNING BOARD

RECEIVED TOWN CLERK
GRAFTON, MA
2016 FEB 10 PM 12 18

MODIFICATION OF DEFINITIVE SUBDIVISON PLAN
"GRAFTON HILL" SUBDIVISION

12 Clearview Street, MA
(Assessor's Map 47, Lot 48)

Westerly Side Grafton LLC, (Applicant / Owner)

Decision of the Grafton Planning Board (hereinafter the Board) on the petition of Westerly Side Grafton LLC, 117 Water Street, Milford, MA 01757 (hereinafter the APPLICANT), for Modification of Definitive Subdivision Plan on property located at 12 Clearview Street, Map 47, Lot 48, owned by Westerly Side Grafton LLC (hereinafter the SITE) by deed recorded in the Worcester District Registry of Deeds (WDRD) in Book 43570, Page 163. Said property is located in Residential (R-40) zoning district.

The application for Approval of a Modified Definitive Subdivision Plan was filed with the Planning Board October 7, 2015. Notice of the public hearing and the subject matter thereof was published in the Grafton News on October 21 and October 28, 2015, and posted with the Town Clerk's Office. Abutters were notified by First Class Mail. The public hearing on the Application was opened on November 9, 2015 and continued on November 23, December 14, and January 11, 2016. During the public hearings, all those wishing to speak to the petition were heard. Following public input the hearing was closed on January 11, 2016.

The following Board members were present throughout the public hearing: Chairman Sargon Hanna, Vice Chairman Michael Scully, Clerk Robert Hassinger, and members Linda Hassinger, David Robbins. It is noted that Chairman Hanna was absent at the November 9, 2015 but remained eligible vote on the DECISION upon submission of a Mullin Certification prior to the close of the Public Hearing (see EXHIBIT #22).

At the hearing, George Connors of Connorstone Engineering and Attorney Joseph Antonellis represented the Applicant and presented the proposal. The record of the proceedings and submissions upon which this decision is based may be referred to in the Office of the Town Clerk or in the Office of the Planning Board.

I. PROJECT BACKGROUND

The Applicant is seeking to modify an Approved (endorsed) subdivision. The approved plan was endorsed by the Grafton Planning Board on July 30, 1953 and recorded with the Worcester District Registry of Deeds on December 10, 1954 (Plan Book 202, Plan 33). The original plan was approved prior to the adoption of the Town's Subdivision Rules and Regulations. The endorsed plan created a new roadway named Clearview Street which was approved based on roadway design standards of the time. Twenty two (22) lots were created. Of these two have since been built upon: Lot 1 (southern corner of North Street and Clearview Street) and Lot #13 (located seven lots west of North Street on the northern side of Clearview Street). Clearview Street was never constructed but exists as an unpaved gravel way.

The Applicant is seeking to construct the roadway and associated infrastructure based on the existing plan which, according to State law, is considered a valid plan despite the amount of time that has passed since it was endorsed. The Applicant has two options for development:

1) Develop the approved roadway and then create the lots through an ANR process. This would eliminate the need to modify the plan as presented in the Application and by-pass review by the Planning Board. The roadway and infrastructure would not be held to the development standards by which new roadways and infrastructure are deemed acceptable by the Town if presented for acceptance of the roadway at Town Meeting. During the public hearing the Applicant stated that it was their intention to seek Town Meeting acceptance once the project was complete. In order to achieve this, the Applicant has opted for a modification process through the parameters of the current Subdivision Rules and Regulations.

2) Proceed with a modification process whereby the roadway design and other design requirements of the Subdivision Rules and Regulations are achieved in the interest of creating a more "compliant" project in the best interests of the public. The intent of this approach is to create a project that could be accepted by Town Meeting. The Board concurs that a more compliant subdivision is in the best interests of the public.

Attorney Joseph Antonellis (for the Applicant) and Town Counsel Ginny Sinkel-Kremer both assessed the law pertaining to the modification of a plan endorsed prior to the adoption of subdivision rules and regulations. It was determined that:

- Clearview Street, as depicted on the original plan, can be legally constructed as approved.
- Standards for roadway construction could be based on the local rules and regulations in effect at the time of the approved plan – a significant difference from today's standards.
- The Town would arguably be precluded from accepting a roadway and infrastructure that was not built to the current standards set forth in the Subdivision Rules & Regulations.

They reviewed the Board's duties and responsibilities when considering such aspects as waiver requests and modifications that could be considered as part of the modification process. The Applicant argues that the requested waivers / exceptions are minor in nature and only technical deviations and can be waived by the Planning Board (MGL. c.41 s81R). The Applicant further argues that these are to be considered exceptions and not waivers as there were no subdivision rules and regulations in effect at the time of approval. Modifications to approved plans must be based on those rules and regulations in effect at the time. As there were none, the Applicant argues that the proposed modifications should be granted as exceptions since waivers can't exist given the context of the original approval as it pertains to State law. (See EXHIBIT #15 and #23, FINDING #F4)

The Applicant further noted that they are not bound to redesign primary aspects of the approved plan based on the current Subdivision Rules and Regulations such as length of the roadway or intersection off sets as it has already been demonstrated that the roadway can be built without Planning Board oversight. The Applicant seeks the granting of several exceptions with the intent of bringing the design standards of the approved plan into closer compliance with current day standards set forth in the Subdivision Rules & Regulations. The purpose of this effort is to enable the Applicant / Developer to create a project with current infrastructure standards that could be accepted by the Town in the future. Review by Town Counsel affirmed these premises.

It is to be further noted that the Applicant, along with other parties, has in the recent past filed three separate applications for a Major Residential Special Permit & Preliminary Plan Approval for this property along with two abutting properties. Two applications were withdrawn (MRSP 2012-11 and MRSP 2013-2) and one was

denied (MRSP 2014-4) due to the denial of several waiver requests, including the length of roadway. All information pertaining to these cases can be found in the Grafton Planning Department.

II. SUBMITTALS

The following items were submitted to the Board for its consideration of this application:

EXHIBIT 1. Unbound application packet submitted by Connorstone Engineering., received October 7, 2015, including the following:

- Application for Approval of a Modified Definitive Plan; dated October 6, 2015; 2 pages.
- Project Narrative; prepared by Connorstone Engineering, Inc.; dated September 30, 2015; 2 pages.
- Plan of House Lots; prepared by W.B. Brown C.E.; dated December 10, 1954; 1 page.
- Certified Abutter's List: signed by Assessor's Office Manager; dated August 20, 2015; 1 page.
- Certificate of Good Standing; dated October 7, 2015; 1 page.
- Stormwater Report – Modified Subdivision, Clearview Drive, Grafton, MA; prepared by Connorstone Engineering, Inc.; dated September 30, 2015; 93 pages.
- Plan Set; Modified Definitive Subdivision Plan; Grafton Hill; prepared by Connorstone Engineering; 11" X 17" and 24" x 36"; black and white; dated September 30, 2015; 16 pages; includes the following:
  - Locus Plan / Sheet Index – 1 sheet
  - Plan of Land – 4 sheets
  - Existing Conditions Plan – 1 sheet
  - Topographic Plan – 4 sheets
  - Roadway Plan & Profile – 2 sheets
  - Sewer Plan & Profile – 1 sheet
  - Construction Details – 3 sheets
- Plan Set; Modified Definitive Plan; Grafton Hill; prepared by Connorstone Engineering; 24" x 36"; black and white; dated September 30, 2015; 2 pages; includes the following:
  - Existing Drainage Areas
  - Proposed Drainage Areas
- Plan: Modified Definitive Plan – Catch Basin Drainage Areas of Grafton Hill, Grafton, MA; prepared by Connorstone Engineering; 24" x 36"; black and white; dated September 30, 2015; 1 sheet.

EXHIBIT 2. Correspondence from the Grafton Fire Department; Re: Grafton Hill / Clearview; received August 11, 2015; 1 page.

EXHIBIT 3. Site Visit Report; Graves Engineering Inc.; dated September 15, 2015; received September 18, 2015; 5 pages.

EXHIBIT 4. Departmental Comment Form; prepared by Samantha Lubke, Treasurer & Collectors Office; dated and received October 14, 2015; 1 page.

EXHIBIT 5. Departmental Comment Form; prepared by Superintendent Jay Cummings, School Department; dated October 14, 2015; received October 15, 2015; 1 page.

EXHIBIT 6. Correspondence from Attorney Joseph Antonellis; Re: 12 Clearview Street, Grafton (the "Property"); dated October 15, 2015; received October 19, 2015; 16 pages.

EXHIBIT 7. Departmental Comment Form; prepared by Chief Normand Crepeau, Police Department; dated October 27, 2015; received October 28, 2015; 1 page.

EXHIBIT 8. Departmental Comment Form with Letter of Correspondence; prepared by Paul Cournoyer, Sewer Department; dated and received October 30, 2015; 3 pages.

EXHIBIT 9. Correspondence from Stephen L. Charest, Assistant Chief, Fire Department; Ref: Modified Definitive Plan 2015-6: Grafton Hill Subdivision; dated and received November 2, 2015; 1 page.

EXHIBIT 10. Correspondence from Graves Engineering; Grafton Hill – Clearview Street, Modified Definitive Subdivision Plan Review; dated November 5, 2015, received November 9, 2015; 3 pages.

EXHIBIT 11. Departmental Comment Form; prepared by Katrina Koshivos, Zoning Board of Appeals; dated November 6, 2015; received November 6, 2015; 1 page.

EXHIBIT 12. Email correspondence from Town Counsel Ginny Sinkel-Kremer, RE: Grafton Hill; received November 9, 2015; 3 pages.

EXHIBIT 13. Public Meeting Sign In Sheet, November 9, 2015; 1 page.

EXHIBIT 14. Written Request for Public Hearing Continuance, signed by Attorney Joseph Antonellis representing the Applicant / Owner, received at the November 9, 2015 public hearing; 1 page.

EXHIBIT 15. Memorandum from Town Counsel; RE: Grafton Hill; dated and received November 20, 2015; 2 pages.

EXHIBIT 16. Correspondence from Connorstone Engineering, Inc.; Subject: Grafton Hill Modified Subdivision Plan – North Street, Grafton, MA; includes review comments and Stormwater Pollution Prevention Plan; dated November 23, 2015; 13 pages.

EXHIBIT 17. Plan Set of Grafton Hill in Grafton, MA; prepared by Connorstone Consulting Civil Engineers and Land Surveyors; 11" X 17"; black and white; dated September 30, 2015; revised through November 23, 2015; received November 23, 2015; includes the following:

- Locus Plan / Sheet Index – 1 sheet
- Plan of Land – 4 sheets
- Existing Conditions Plan – 1 sheet
- Topographic Plan – 4 sheets
- Roadway Plan & Profile – 2 sheets
- Sewer Plan & Profile – 1 sheet
- Construction Details – 3 sheets

EXHIBIT 18. Public Meeting Sign In Sheet, November 23, 2015; 1 page.

EXHIBIT 19. Written Request for Public Hearing Continuance, signed by Attorney Joseph Antonellis representing the Applicant / Owner, received at the November 23, 2015 public hearing; 1 page.

EXHIBIT 20. Plan Set of Grafton Hill in Grafton, MA; prepared by Connorstone Consulting Civil Engineers and Land Surveyors; 11" X 17" and 24" x 36"; black and white; dated September 30, 2015; revised through November 23, 2015; received November 30, 2015; includes the following:

- Existing Conditions Plan – 1 sheet
- Topographic Plan – 4 sheets
- Roadway Plan & Profile – 2 sheets
- Sewer Plan & Profile – 1 sheet
- Construction Details – 3 sheets

EXHIBIT 21. Plan Set of Grafton Hill in Grafton, MA; prepared by Connorstone Consulting Civil Engineers and Land Surveyors; 11" X 17" and 24" x 36"; black and white; dated September 30, 2015; revised through November 23, 2015; received November 30, 2015; includes the following:

- Sheet Index – 1 sheet
- Plan of Land – 4 sheets

EXHIBIT 22. Mullin Rule Certification signed by Chairman Sargon Hanna; dated and received November 30, 2015; 1 page.

EXHIBIT 23. Correspondence from Connorstone Engineering; Re: Grafton Hill – Exceptions Document – Supplemental; dated December 8, 2015; received December 11, 2015; 7 pages.

EXHIBIT 24. Public Meeting Sign In Sheet, December 14, 2015; 1 page.

EXHIBIT 25. Written Request for Public Hearing Continuance, signed by Attorney Joseph Antonellis representing the Applicant / Owner, received at the December 14, 2015 public hearing; 1 page.

EXHIBIT 26. Plan; Street Light Locations, Grafton Hill , North Street, Grafton, MA; prepared by Connorstone Engineering; 8 ½" x 11", black & white; dated and received December 15, 2015; 1 page.

EXHIBIT 27. Plan Set of Grafton Hill in Grafton, MA; prepared by Connorstone Engineering; 11" X 17"; black and white; dated September 30, 2015; revised through December 28, 2015; received December 31, 2015; includes the following:

- Sheet Index – 1 sheet
- Plan of Land – 4 sheets
- Existing Conditions Plan – 1 sheet
- Topographic Plan – 4 sheets
- Roadway Plan & Profile – 2 sheets
- Sewer Plan & Profile – 1 sheet
- Construction Details – 3 sheets

EXHIBIT 28. Correspondence from Graves Engineering; Grafton Hill – Clearview Street, Modified Definitive Subdivision Plan Review; dated and received January 7, 2016; 4 pages.

EXHIBIT 29. Plan Set; prepared by Connorstone Engineering; 11"X17"; black and white; dated September 30, revised through January 8, 2016; received January 8, 2016; 11 sheets; includes the following.

- Existing Conditions Plan – 1 sheet
- Topographic Plan – 4 sheets
- Roadway Plan & Profile – 2 sheets
- Sewer Plan & Profile – 1 sheet
- Construction Details – 3 sheets

EXHIBIT 30. Plan Set; prepared by Connorstone Engineering; 11"X17"; black and white; dated September 30, revised through January 8, 2016; received January 8, 2016; 5 sheets; includes the following.

- Sheet Index – 1 sheet
- Plan of Land – 4 sheets

EXHIBIT 31. Plan Set; prepared by Connorstone Engineering; 11"X17" and 24" x 36"; black and white; dated September 30, revised through January 8, 2016; received at the January 11, 2016 public hearing; 16 sheets; includes the following.

- Sheet Index – 1 sheet
- Plan of Land – 4 sheets
- Existing Conditions Plan – 1 sheet
- Topographic Plan – 4 sheets
- Roadway Plan & Profile – 2 sheets
- Sewer Plan & Profile – 1 sheet
- Construction Details – 3 sheets

EXHIBIT 32. Public Meeting Sign In Sheet, January 11, 2016; 1 page.

III. FINDINGS

At their meeting of February 9, 2016, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Mr. Robbins, seconded by Mrs. Hassinger) voted 5-0 in favor to make the following findings:

F1.) That this application is the Modification of Definitive Subdivision Plan approved by the Grafton Planning Board on July 30, 1953 and recorded at the Worcester District Registry of Deeds, Plan Book 202, Plan 33. See PROJECT BACKGROUND for more information regarding the original approval.

F2.) That determinations regarding the following findings are based upon the Plans identified in this Decision, as well as the information and material submitted and presented in association with the Application.

F3.) That determinations regarding the following findings are also predicated upon satisfactory completion of road and other related improvements as approved by the Board and as shown on the Plans in accordance with *Rules and Regulations Governing the Subdivision of Land: Grafton, Massachusetts,* revised through 4/27/09 (hereinafter *Rules and Regulations*), except where modified

by this Decision, as well as in accordance with all applicable Federal, State and other Local regulations.

F4.) That the Applicant requested exceptions from the Subdivision *Rules and Regulations*. The Applicant noted that these were not waiver requests as the Approved (endorsed) Plan was endorsed prior to the adoption of *Subdivision Rules and Regulations* (see EXHIBIT #23 and PROJECT BACKGROUND for more information). The Applicant requested that the Board grant a list of exceptions from the Subdivision Rules and Regulations for the submission of three items considered technical submissions (see FINDING #F16) and ten design requirements. The Board noted that they do not have the authority or a means to grant exceptions to the Subdivision Rules and Regulations.

The disposition of each of those items were grouped into three categories discussed by the Board - technical information (3 items addressed in Finding #F16), five design requirements that could be discussed (addressed in Finding #F17) and five design requirements that were determined beyond the Board's ability to review given the legal status of the approved roadway. Those five items are individually noted below and did not warrant an additional finding later in this Decision as they were deemed "off the table" early on and not discussed further as the public hearing progressed.

The Board and the Applicant discussed each item at the December 14, 2015 public hearing and made several determinations with regards to submission requirements to be considered at the time of DECISION. The list of technical information items and design requirements discussed are as follows:

i. **§3.3.3.20 - Tree Plan** - See FINDING #F16.
ii. **§3.3.4.1 — Environmental & Community Impact Analysis** - See FINDING #F16.
iii. **§3.3.4.3 — Staking of the Roadway Centerline** – See FINDING #F17.
iv. **§3.3.4.7 — Traffic Study** - See FINDING #F16.
v. **§4.1.2.1(b) — Location – General**: To allow proposed grades within the right-of-way to be more than six feet above existing grade for the construction of the proposed roadways from Station 12+65 to 13+65 – See FINDING #F17.
vi. **§4.1.3.5 — Alignment:** At the intersection with North street allow the right of way to be cut back with a 30 foot radii on the north side only – See FINDING #F17.
vii. **§4.1.3.6 — Intersection separation:** The existing Clearview Street is less than 600 feet from Old Westborough Road. Imposing the present regulation would require the Applicant to abandon the previously approved plan. The endorsed plan was approved prior to the establishment of the Town's Subdivision Rules & Regulations and is considered a valid plan (see PROJECT BACKGROUND). The approved roadway as it intersects with North Street on the original plan is considered valid and not subject to modification based on the current Subdivision Rules and Regulations.
viii. **§4.1.3.7 - Roadway centerlines** shall be collinear with the centerline of the roadway right of way. The distance between edge of pavement and edge of right of way shall remain constant – See FINDING #F17.
ix. **§4.1.5.6 — Leveling Areas** – See FINDING F #F17.

x. **§4.1.6.3 — Dead End Length**: The overall length of Clearview Street will match the endorsed Definitive Subdivision plan which has been deemed valid. The overall length of Clearview is 2020 linear feet. The endorsed plan was approved prior to the establishment of the Town's Subdivision Rules & Regulations and is considered a valid plan (see PROJECT BACKGROUND). The approved roadway on the original plan is considered valid and not subject to modification based on the Subdivision Rules and Regulations. The Board notes that while it is precluded from addressing this issue given that nature of the legal status of the approved plan, the Board does not generally support such a waiver which significantly deviates from the current Subdivision Rules and Regulations standards.

xi. **§4.1.6.5 — Roadway Easement:** To not require an easement from the dead end to adjacent property. The Board noted that the endorsed Definitive Plan was approved prior to the adoption of the Town's Subdivision Rules & Regulations. This design and access element was not required at that time and cannot be imposed as part of the modification. The approved roadway and lot configuration on the original plan is considered valid and not subject to modification based on the Subdivision Rules and Regulations

xii. **§4.2 — Curbs and Berms:** To allow the use of bituminous Cape Cod berm throughout the proposed roadway. After discussion with the Board, the Applicant agreed to sloped granite curbing along the roadway throughout the subdivision. Request for consideration as an exception was withdrawn. The Board finds that the plan set was revised to reflect the agreed upon sloped granite (see EXHIBIT #31).

xiii. **§4.7.6 — Street Lights:** The proposed plan has not included street lighting. After discussion with the Board, the Applicant agreed to include a street lighting plan. Request for consideration as an exception was withdrawn. The Board finds that the street lighting plan was revised to reflect the required number street lights (see EXHIBIT #25 and 31).

At their meeting of February 9, 2016, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Mr. Robbins, seconded by Mrs. Hassinger) voted 5-0 in favor to make the following findings:

F5.) That during the public hearing the Board and the Applicant discussed the validity of the original plan approved and endorsed in 1953. It was determined that the existing plan is valid, that the roadway could be built as approved based on the standards of the time it was approved and without adhering to the Subdivision Rules and Regulations. However, this course of action would preclude the acceptance of the roadway and infrastructure by the Town. The Applicant is seeking to modify the approved plan to bring it up to standards which could be acceptable to the Town and make the roadway and infrastructure eligible for Town Meeting acceptance. It was determined by the Applicant's attorney and Town Counsel that the Planning Board could consider modifications based on the current Subdivision Rules and Regulations. However, the approved roadway and its location were not subject to modification in terms of location and intersection with North Street. See Sections PROJECT BACKGROUND, EXHBITS #15 and #23).

F6.) That during the public hearing the Board and the Applicant discussed the irregular lot shapes. Town Counsel notes:

> *".... the subdivision has clearly lost the benefit of any zoning freeze(s) under G.L. c. 40A, and therefore the lots must comply with current zoning requirements, a point that the Applicant concedes. The lots depicted in the 1954 Plan are substantially smaller than the current requirement of a minimum of 40,000 square feet, but with the addition of the land to the south subdivided into "rat tail" formation, the minimum lot area can be achieved, as is depicted in the Modified Definitive Subdivision Plan (hereinafter "the Modified Plan") dated September 30, 2015. Additionally, with a small reduction in the number of lots and some minor reconfigurations, minimum frontage also appears to have been substantially achieved. Although the lot configuration may be visibly disturbing, I have reviewed the Applicant's proposed "Declaration of Restriction," under which the "rat tail" portions of the lots will remain open and undisturbed in perpetuity, with enforcement mechanisms in favor of the Town. Although we are still finalizing its terms, I am generally satisfied with the restrictions and enforcements mechanisms." (See EXHIBIT #15).*

The Board noted that these areas would have to be restricted in a way to prohibit placement of structures of any kind.

F7.) That during the public hearing the Board and the Applicant discussed street lights. After review of the *Subdivision Rules and Regulations* and discussion centering around public safety the Applicant revised the plans to include streetlight locations. A total of seven (7) streetlights are proposed based on the requirements of the *Subdivision Rules and Regulations*. It was noted that the Board of Selectmen would review and approve the street light locations. The Board expressed concern about any proposed changes to the plans made by the Board of Selectmen. It was noted that those changes would be discussed and coordinated with the Board as needed and as reviewed by the public safety officials in conjunction with both Boards.

F8.) That during the public hearing the Board and the Applicant discussed the sewer easement which connects the gravity fed system down to Carroll Road. The Applicant stated that they had received an easement from one of the two property owners. The second easement from the Grafton and Upton Railroad is forthcoming and expected shortly. The Board noted that all sewer easements must be properly executed, filed with the Worcester District Registry of Deeds and copies submitted to the Planning Board and Sewer Department.

F9.) That during the public hearing the Board and the Applicant discussed access to adjoining property as required by Section 4.1.6.5 of the Subdivision Rules and Regulations. The intent of this requirement is to create an easement to allow for a through road from the end of a dead end road to adjacent property. The Applicant noted that they had approached the property owner to the east who was not interested in an easement to their property. The property to the north is separated by the railroad line and an easement is not necessary given the difficulty of crossing an active rail line. Both properties to the north and east have frontage on existing public ways and would not be constricted for future development if the easements were not granted. The Board noted that this provision of the Rules and Regulations were developed to ensure that adjacent parcels could be developed and that the easement would enable them to access their land. It was further noted that this provision was not applicable in this case as the roadway was part of an approved plan that was endorsed prior to the adoption of Subdivision Rules and Regulations.

F10.) That during the public hearing the Board and the Applicant discussed the right of way layout in the loop road area. The Applicant noted that the approved plan shows what was once a traditional road

layout in the loop area where the lots are squared off along the right-of-way thereby creating "square corners" at each turn of the loop road. This is no longer an accepted layout for a right of way as the squared corners create excessive space between the roadway and the property lot lines. To modify this road layout for public safety reasons, the plan has been changed to allow for rounded curves on the interior of the loop road. The exterior line of the right of way is still squared off but the interior modification results in additional room for maneuverability. This modification has resulted in some irregular lot frontages that are not collinear with the roadway thereby leaving three triangular spots within the right of way that could be misconstrued as lot area by future property owners. The Board acknowledges that that strict adherence to the Rules and Regulations would create a conflict with other requirements such as lot width and frontage. The Board noted the property bounds for these lots would have to be clearly documented in each deed indicating where the right of way is in relation to each lot that abuts the squared off areas within the right of way.

F11.) That during the public hearing the Board noted that the Sewer Department submitted comments (see EXHIBIT #8). They requested that the Applicant:

- Eliminate drop sewer manholes (SMH) and change to internal drops and provided a diagram (see EXHIBIT #8). The Board finds that the Applicant complied with this request (see EXHIBIT #31 and EXHIBIT #27).
- Provide a copy of the proposed easement agreement between the developer and the Grafton and Upton Railroad and the developer and private property owner on Carroll Road. It should be noted that sewer construction cannot commence until all sewer easement have been signed and recorded.

F12.) That during the public hearing the Board noted that the Fire Department submitted comments (see EXHIBITS #2 and #9). Concern was raised about the hydrant locations. The Fire Department stated that they did not have an issue with the roadway or the hydrant locations (see EXHIBIT #9). In addition they noted their preference for a 28 foot wide road but not less than 24 feet in width. The plan set shows roadway width varying from 28 feet (from North Street to the intersection of the loop road) and 26 feet around the loop road (see EXHIBIT #31). Additional requirements for lot and house development were included and will be referenced in the Conditions of this Decision.

F13.) That during the public hearing the Board noted that the Police Department submitted comments (see EXHIBIT #7). They note that final approval of this development should be subject to the proper installation of all necessary traffic control signs and devices.

F14.) That during the public hearing the Board noted that the School Department submitted comments (see EXHIBIT #5). It is noted that the development would impact the North Grafton Elementary schools, the Middle School and the High School with an additional 72 students.

F15.) The Board finds that the final peer review report prepared by the Board's consulting engineer, Jeff Walsh of Graves Engineering, was submitted on January 7, 2016. The Board further notes that there were some items that would require resolution prior to signing the modified plans prior to recording. (See EXHIBIT #27)

F16.) That during the public hearing the Board and the Applicant discussed the several technical information submission requirements of the *Subdivision Rules and Regulations*. (See also FINDING #F4). It was noted that some of the material was submitted in previous applications and some information was not relevant given the nature and legal status of the originally approved plan. The Applicant and the Board discussed each of the following items:

i. **§3.3.3.20 - Tree Plan**. The Applicant stated that the roadway layout is predetermined by a previously approved Subdivision in 1953. It was further noted that the approved roadway will follow the existing gravel access road and that the existing conditions eliminated the need to submit such a plan. The Board notes that the Applicant cannot be compelled nor required to change the layout of the roadway and that the existing conditions would not necessitate the submission of a Tree Plan for the purposes specified in the Subdivision Rules & Regulations.

ii. **§3.3.4.1 — Environmental & Community Impact Assessment (ECIA)**: The Applicant noted that an ECIA was previously submitted as part of the Major Residential Special Permit (MRSP 2012-11) and Preliminary Plan Approval application. The Applicant noted that earlier submittal was for a project much larger in scale and intensity, that the report requirements had not changed, and that data was still relevant. The Applicant asked that earlier ECIA be considered adequate documentation to satisfy this Application requirement. The Board agreed with the Applicant noting that the earlier ECIA for the same property would be sufficient. It was further noted that Applicant cannot be compelled nor required to submit an ECIA as specified in the *Subdivision Rules & Regulations* as this requirement was not in effect at the time of approval and endorsement of the original plan.

iii. **§3.3.4.7 — Traffic Study**: The Applicant noted that a traffic study was previously submitted and reviewed by the Board as part of the Major Residential Special Permit (MRSP 2012-11) and Preliminary Plan Approval application. The Applicant noted that earlier submittal was for a project much larger in scale and intensity and that data was still relevant. The Applicant noted that the current project would be generating less traffic and that the impacts would be reduced due to the smaller scale of the current project. The Board agreed with the Applicant noting that the earlier traffic study for the same property would be sufficient. The current number of lots in this Application is significantly smaller than the number of lots presented in previous applications. The Board finds that the information presented in the recent traffic study adequately addresses potential traffic impacts. It was further noted that Applicant cannot be compelled nor required to submit a traffic study as specified in the *Subdivision Rules & Regulations* as this requirement was not in effect at the time of approval and endorsement of the original plan.

F17.) That during the public hearing the Board and the Applicant discussed design requirements of the *Subdivision Rules and Regulations* (see also: FINDING #F4 and EXHIBIT # 23):

- **§3.3.4.3 — Staking** of the Roadway Centerline
- **§4.1.2.1(b) — Location – General**: To allow proposed grades within the right-of-way to be more than six feet above or existing grade for the construction of the proposed roadways from Station 12+65 to 13+65.
- **§4.1.3.5 — Alignment**: At the intersection with North street allow the right of way be cut back with a 30 foot radii on the north side only.
- **§4.1.3.7 - Roadway centerlines** shall be collinear with the centerline of the roadway right of way. The distance between edge of pavement and edge of right of way shall remain constant.
- **§4.1.5.6 — Leveling Area**

The Board notes that deliberation on discrepancies of the design requirements, as presented by the Applicant, from the time the plan was approved in 1953 and current design standards set forth in the

current *Subdivision Rules and Regulations* are predicated on several points of fact unique to this Application:

1. The Applicant is seeking to modify an Approved (endorsed) subdivision. The endorsed plan was approved in 1953.
2. Proposed modifications to roadway construction standards and ancillary plan submittal requirements are those contained in the present day *Subdivision Rules and Regulations* of the Grafton Planning Board. No regulations are known to have existed in 1953.
3. The pre-existing plan was endorsed based on acceptable roadway construction practices of that era. However, no material exists which documents the standards by which the original plan was evaluated or approved. It is evident that the design standards set forth in the current *Subdivision Rules and Regulations* are significantly different than those which precipitated the approval of the original plan regardless of standards acceptable to the Town in 1953 despite the lack of documentation in which to compare and to modify the original plan.
4. The Board recognizes that the Applicant is legally entitled to pursue the development of the endorsed plan through an ANR process which would eliminate the need to modify the plan as presented in the Application. The Board recognizes that this option would eliminate the opportunity to provide a more "compliant" subdivision based on the *Subdivision Rules and Regulations*. The Board concurs that a more compliant subdivision is in the best interests of the public. Conversely, it is recognized by the Applicant that pursuing this option would risk Town Meeting acceptance of the infrastructure and roadways. (See SECTION I. PROJECT BACKGROUND).
5. The purpose of the modification request is to bring the design standards of the approved plan into closer compliance with current day standards as set forth in the *Subdivision Rules and Regulations*. The purpose of this effort is to enable the Applicant / Developer to create a project with current infrastructure standards that could be accepted by the Town in the future.

The board finds that the deviation from the design requirements of the Subdivision Rules and Regulations is not n the best interests of the Town, and thus does not support such deviation. However, the legal requirements and constraints associated with this particular Application compel the Board to recognize that, in this case, the proposed modifications, although they deviate from certain design requirements, are not more detrimental than the originally approved plan. The Board further notes that the deviations outlined in this FINDING are not substantially against the *Subdivision Rules and Regulations* and finds that, due to the unique circumstances of this Application, the deviations are acceptable.

V. DECISION and CONDITIONS

At their meeting of February 9, 2016, after due consideration of the exhibits submitted and the entire record of proceedings introduced and accepted in this matter, the Grafton Planning Board (motion by Mr. Robbins, seconded by Mrs. Hassinger) voted 5-0 to **APPROVE** the Application for Approval of a Modified Definitive Subdivision Plan with the following conditions:

Standard Conditions

C1. This Approval shall not be construed as approving the buildability of any lots shown on the Plans. All applicable Federal, State or other Local permits/approvals must be obtained for each lot prior to construction on said lot.

C2. This Approval shall not be construed as final approval of any on- or off-site improvements or work (such as water, sewer, drainage, or other utilities installation) associated with this project and shown on the Plans. All applicable Federal, State and Local approvals / permits shall be obtained by the Applicant prior to the construction of any portion of the development or off-site improvements that warrant such approvals / permits. All applicable requirements of the Grafton Water District, Grafton Board of Sewer Commissioners/Sewer Department, Grafton Police Department, Grafton Department of Public Works, and all other applicable utilities, are hereby incorporated by reference as a requirement of this Decision.

C3. Any additional modification to the approved Plans shall require, prior to implementing such change, a determination from the Planning Board as to whether the proposed change is substantially different than presented in the materials and information used in making this Decision. The Planning Board reserves the right to solicit comments from other Town boards, departments and committees, as well as its consulting engineer, in making determinations regarding such changes. The Planning Board may, upon its determination, require a modification of this Decision if it finds that the proposed changes are substantial in nature and of public concern, and substantially alter the plans and information used in making this Decision. Any Modification of this Decision shall be made pursuant to Section 3.3 of the *Subdivision Rules and Regulations*.

C4. The Planning Board reserves the right, pursuant to the *Subdivision Rules and Regulations* to utilize the services of a professional engineer in reviewing any materials required to be submitted as conditions of this Decision, and conducting any inspections or other work associated with the construction of the subdivision. In accordance with the applicable sections of the *Subdivision Rules and Regulations* and the ZBL, any fees or expenses associated with such reviews and inspections shall be the responsibility of the Applicant. Such inspections or reviews will not be conducted if a zero or negative balance exists in any account established by the Planning Board for the purposes stated in this Condition.

C5. All site development and construction shall be performed in accordance with the approved Plans and the *Rules and Regulations Governing the Subdivision of Land: Grafton, Massachusetts* (revised through 4/27/09), as well as with all applicable Federal, State and Town laws, ordinances and regulations. In the event of a discrepancy between the Plans and the *Rules and Regulations*, and absent clarification or approval of such discrepancy stated within the Findings or Conditions of this Decision, the requirements of the *Rules and Regulations* shall apply. All required permits and approvals shall be secured by the Applicant at the appropriate stage of construction and copies of all pertinent documents regarding said permits and approvals shall be filed with the Planning Board in a timely manner.

C6. Construction of the improvements shown on the Plans approved as part of this Decision is subject to approval by the Grafton Conservation Commission. If such Order of Conditions and/or permits require substantial modifications to any of the plans approved by the Planning Board, the Board may, upon its determination, require a modification of this Decision if it finds that the proposed changes are substantial in nature and of public concern, and substantially alter the plans and information used in making this Decision.

C7. All grading and construction shall be performed in accordance with the Plan, as well as all applicable Federal, State and Local regulations, and shall be accomplished so as not to discharge any non-permitted pollutants or siltation into waterways during construction or after completion of the subdivision.

C8. The Applicant, their successors and assigns, will not sell any lot in the subdivision or erect or place any permanent building on any such lot until the construction of ways and municipal services necessary to adequately serve such lot has been completed (with the exception of curbing and final course paving) in accordance with the approved Plans and the *Subdivision Rules and Regulations*. Adequate emergency vehicle access is required at all times. The Applicant, their successors and assigns may opt to construct the roadway in upon review and approval by the Planning Board per the *Subdivision Rules & Regulations* (see CONDITION #C15). Given the length of the approved roadway and recognizing the need for ongoing emergency access the Applicant, their successor and assigns are required to provide an adequate emergency vehicle turn around area during all phases of construction. Emergency access turn around areas shall be shown on the phasing plans which must be approved by the Grafton Fire Department. The Applicant, their successors and their assigns shall receive written approval from the Planning Board and the Grafton Fire Department of the proposed turn around areas including but not limited to turning capabilities for existing emergency equipment and surface materials to accommodate the weight of the equipment. Written approval from the Grafton Fire Department shall be submitted to the Planning Board. The Town of Grafton reserves the right to inspect the ongoing roadway development with specific regard to provisions for emergency vehicle access in the interest of protecting public safety. Construction and / or lot development will be halted if emergency vehicle access is deemed inadequate at any time and until such time as the problem has been resolved to the satisfaction of the Town. In the event of a discrepancy between the Plans, conditions set for in this DECISION or the *Subdivision Rules and Regulations*, and absent clarification or approval of such discrepancy stated within the Findings or Conditions of this Decision, the requirements of the *Subdivision Rules and Regulations* shall apply.

C9. This Modification of Definitive Plan Decision shall be recorded in the Worcester District Registry of Deeds (WDRD) prior to any ongoing Town review and / or peer review associated with conditions set forth in this Decision. The Applicant shall submit evidence to the Planning Board that this Decision has been recorded at the WDRD, including a copy of such recording bearing the WDRD Book and Page Number and/or Instrument Number. Any such Plan(s) submitted to the Planning Board for approval shall contain reference to this Decision, as well as other related approvals, indicating that such plans are prepared pursuant to said Decision(s)/Approval(s) and shall include WDRD recording information, including Book and Page numbers. By recording this Definitive Plan Approval Decision in the Worcester Registry of Deeds, the Applicant agrees to and accepts the conditions set forth in this Decision, and which acceptance shall bind the Applicant and its successors and assigns.

C10. Inability, failure or refusal by the Applicant to comply with the Conditions of this Decision, when notified of failure of compliance, may result in withholding building permits and / or release of lot(s), and potentially a determination that the subdivision is in default.

Conditions to be satisfied Prior to Endorsement of the Modified Plan

C11. The Conditions set forth in this Decision shall be inscribed on a sheet of the Plans suitable for recording at the Worcester Registry of Deeds (WDRD). Such sheets shall be so recorded as part of the Modified Definitive Plan. Reference to these Conditions, as well as the WDRD Book and Page

number of the recorded Decision and the corresponding sheet numbers shall also be inscribed on any sheet(s) that do not contain the Conditions of Approval

C12. Revise plans to address comments received from the Sewer Department (EXHIBIT #8) which sate: Area between SMH sta. 11+03 and SMH sta. 13+92 must be ductile iron pipe per department standard.

C13. Revise plans to address comments received from Graves Engineering dated January 7, 2016 (EXHIBIT #27): Revise Sheet 4 of 5 of the Land Plan to show property ownership on the abutting property located on the east side of North Street.

C14. The Draft Sewer Easements, Draft Declaration of Deed Restrictions and Draft Restrictive Covenant shall be reviewed and approved by the Planning Board.

C15. Per the requirements of Section 3.3.7.3 of the Subdivision Rules & Regulations, the Applicant shall submit acceptable construction and maintenance schedule documents. The Board may require modifications to any and all of said proposals. Endorsement may be withheld at the Board's discretion until such proposals are deemed by the Board to be acceptable.

Conditions to be satisfied prior to the Start of Any Construction Activity

C16. The approved Modified Definitive Plan, approved Restrictive Covenant, approved Sewer Easement and approved Declaration of Deed Restrictions shall be signed by the Planning Board. The signed documents shall be recorded at the Worcester District Registry of Deeds. The Applicant / Developer shall notify the Planning Board within ten (10) days of the recording of all pages of the approved documents and will notify the Board in writing, presenting evidence of the recording.

C17. Prior to the commencement of work, the Planning Board shall be provided with the following:
   a. Five (5) full size, 24" x 36", recorded plan sets, one of which shall be sent directly to the Town's peer review consulting engineer. The recorded plan set shall include the information required pursuant to Condition #C11 through #C15.
   b. An electronic copy of the recorded plan set. The electronic copy shall be in a "PDF" compatible format.

C18. Prior to commencing any work within North Street, a public way, all required permits / approvals shall be obtained from the Grafton Department of Public Works.

C19. In accordance with the National Pollutant Discharge Elimination System (NPDES) Phase II requirements, a Stormwater Pollution Prevention Plan shall be maintained at all times on the Site by the Applicant / Developer. A copy of this document shall be forwarded to the Planning Board, Conservation Commission and Department of Public Works prior to commencing any construction activity.

Conditions to be satisfied During Construction

C20. Construction and installation of the roadway and municipal services shall only occur Monday through Saturday between the hours of 7:00 a.m. and 5:00 p.m., and there shall be no construction activity on State or Federal holidays.

C21. All site construction, development and improvements shall be inspected at the appropriate stage(s) of construction by the Planning Board or its agent upon request made by the Applicant to the Planning Board or its agent, in accordance with any policies for such requests.

C22. The Town reserves the right to require reasonable additional construction techniques, for either on-site or off-site work, in response to actual field conditions, effects of construction methods and as the situation warrants. This may include, without limitation, earth work, purchase and installation of materials, infrastructure, etc., and lot drainage issues.

C23. All construction vehicles and vehicles of all workers are to be parked on site. Parking of construction vehicles on North Street is specifically prohibited, except during the period of the initial clearing of the property.

C24. The Applicant shall take all necessary measures to minimize dust from rising and blowing across the site and onto roads and adjacent properties. Any sediment or dirt tracked onto public ways shall be swept prior to the end of the construction day.

Conditions to be met prior to Release of Lots or Reduction of Surety

C25. Deed restrictions for the common easement areas for each lot shall be submitted to the Planning Board or its agent for approval. Draft deed language shall be submitted for approval to the Planning Board or its Agent. Final approval of draft deed restriction language shall be granted via correspondence from the Planning Board or its agent. The Applicant / Developer shall be responsible for recording the approved deed restrictions at the Worcester District Registry of Deeds (WDRD) and provide evidence to the Planning Board, including a copy of such recording bearing the WDRD Book and Page Number and/or Instrument Number. All lot release requests submitted to the Planning Board will include reference to the deed restrictions on said lots.

C26. All stormwater management facilities and associated structures, including pipe, loaming, and seeding, shall be installed, and stormwater runoff suitably controlled, to the satisfaction of the Planning Board or its Agent prior to the release of any lot within that portion of the subdivision.

C27. No lots shall be released unless served by adequate municipal services as determined by the Grafton Fire Department, Grafton Police Department and the Planning Board or its agent; and, at a minimum, the binder course of pavement in accordance with Condition #C8.

Conditions to be met prior to the Issuance of either a Temporary or Permanent Occupancy Permit

C28. The Building Inspector, in consultation with the Town Planner, shall require proof of a valid and duly recorded Lot Release for said lot in question.

C29. Inspection of each lot shall be made by the Fire Department to ensure compliance with safety requirements such as visibility of street numbers day and night, access to the perimeter for firefighting purposes, entrances shall be void of all obstacles to a minimum of 30 feet (light poles, trees, shrubs, stonewalls, gates, posts, mailboxes, etc.) and any other requirement set forth by the Fire Department to ensure adequate safety access.

Conditions to be met prior to Request for Determination of Completeness

C30. Prior to acceptance of the way and improvements by the Town, a determination shall be made by the Planning Board, as to whether the detention basins, as well as all other improvements, are constructed and operate as designed on the approved plan(s). If a negative determination is made, the Applicant shall, at their own expense, remedy any and all deficiencies to the satisfaction of the Board.

C31. A final inspection by the Police Department and Department of Public Works will be conducted to ensure that all public safety signage and roadway markings have met the required standards. The Town reserves the right to require additional public safety controls in the event that site conditions may warrant. The Applicant / Developer shall be responsible to submitting a final approval from both the Police Department and the Department of Public Works that the all signs and other public safety controls have been identified and installed to their satisfaction. This Condition does not nullify or negate the requirements set forth in Section 3.2.11.2.d (Written Evidence of Compliance from Superintendent of Streets) of the Subdivision Rules and Regulations during the Determination of Completeness Review.

VI. RECORD OF VOTE

Constituting a majority of the Planning Board, the following members voted 5-0 to **APPROVE** the Applicant's Modification of Definitive Plan Application with Conditions based on the information received at the public hearing and the aforementioned findings.

Sargon Hanna, Chairman	AYE	Linda Hassinger, Member	AYE
Michael Scully, Vice Chairman	AYE	David Robbins, Member	AYE
Robert Hassinger, Clerk	AYE		

DATE OF FILING OF DECISION: BY ORDER OF THE BOARD

Joseph Laydon, Town Planner

2-10-2016
Date

cc: Applicant / Owner via Certified Mail
- Attorney Joseph Antonellis
- Connorstone Engineering
- Graves Engineering
- Assistant Town Engineer
- Building Inspector
- Conservation Commission
- Board of Assessors

To Whom It May Concern: This is to certify that the 20 day appeal period has passed and there have been no appeals made to this office.

Donna M Girouard
Donna Girouard, Town Clerk

March 2, 2016
Date

A true copy,
Attest:

Donna M Girouard
Donna M. Girouard, Town Clerk
Grafton, MA

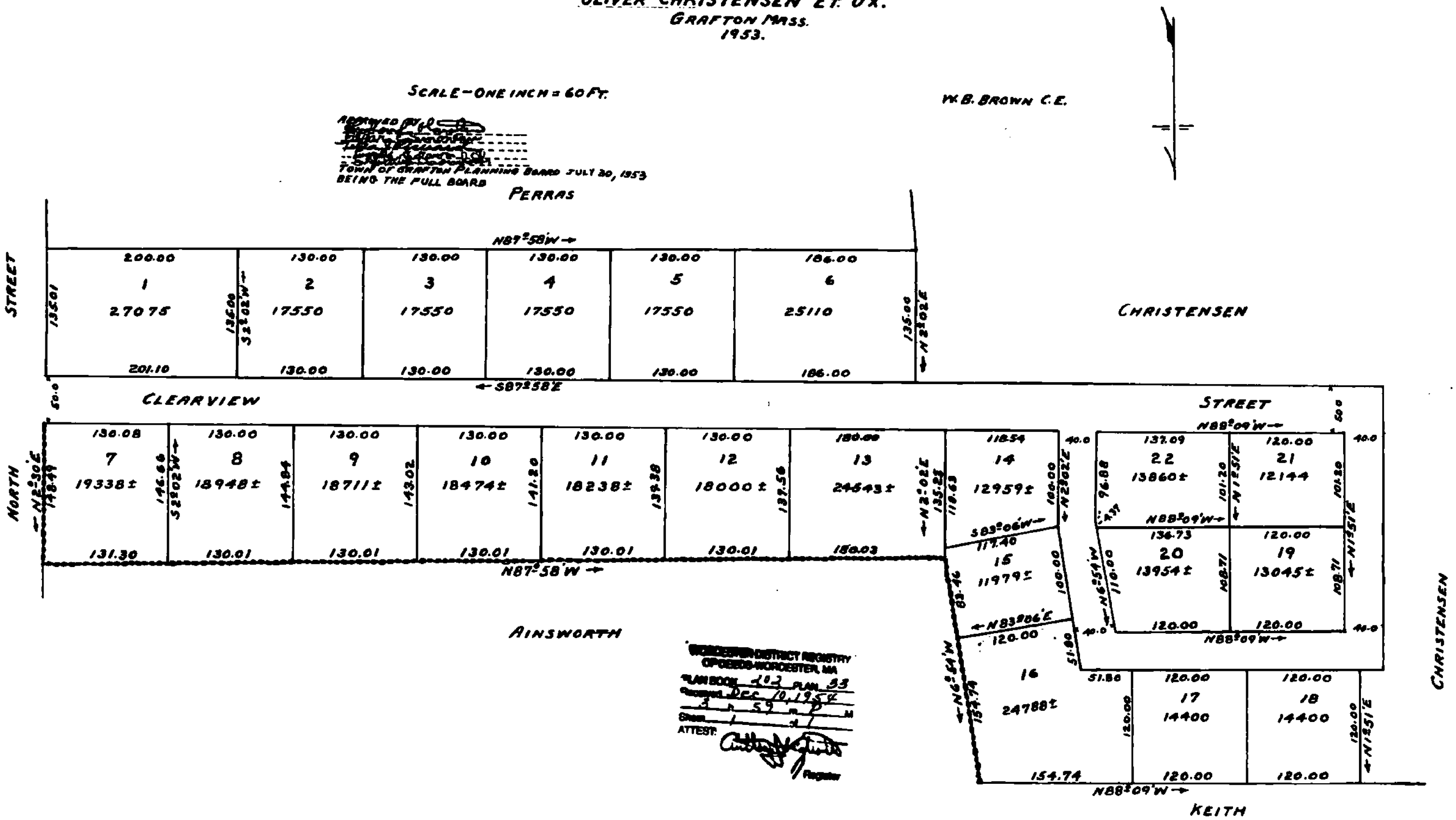
Bk: 55093 Pg: 44

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

SCALE – ONE INCH = 60 FT.

W. B. BROWN C.E.

[redacted]
TOWN OF GRAFTON PLANNING BOARD JULY 30, 1953
BEING THE FULL BOARD



WORCESTER DISTRICT REGISTRY
OF DEEDS-WORCESTER, MA
PLAN BOOK 402 PLAN 33
Received Dec 10, 1954
3 h 59 m P M
Sheet 1 of 1
ATTEST:
Register

ATTEST: WORC. Anthony J. Vigliotti, Register