



08015

CONSERVATION RESTRICTION

The City of Newton, acting by and through its Parks and Recreation Commissioner, with an address at City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts, its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, hereby grants with quitclaim covenants to the Newton Conservators, Incorporated, P.O. Box 590011, Newton Centre, MA 02459, and its permitted successors and assigns ("Grantee") for \$1.00, in perpetuity and exclusively for conservation purposes, the following Conservation Restriction on a parcel of land located in the City of Newton, Middlesex County, Massachusetts, constituting approximately 8400 square feet, more or less ("Premises"), known as 230 Lake Avenue, and more particularly described in a plan to be recorded herewith, a reduced copy attached hereto as Exhibit A "sketch plan". For Grantor's title see deed of Lorraine A. Sciegienny, Trustee of the Crystal Lake Nominee Trust dated June 19, 2008 and recorded with the Middlesex County Registry of Deeds in Book 51395, Page 302.

I. PURPOSES:

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in its current condition in perpetuity and for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values. The Premises were acquired with Community Preservation Act funds, and this Conservation Restriction is granted in accordance with the requirements of G.L. c. 44B, §12.

Purposes include the following:

1. The protection of the Premises contributes to the protection of the scenic landscape and natural character of Crystal Lake, a great pond, and the protection of the Premises will enhance the open-space value of these lands.
2. The protection of the banks and shoreline of Crystal Lake, and the long-term protection of water quality.
3. The preservation of habitat and vegetational cover for near shore aquatic species as well as upland resting and foraging habitat for amphibious and non-aquatic species.
4. The expansion of public access for passive recreation, education, and nature study along the banks and shoreline of Crystal Lake.
5. The prevention of any disposition or diversion of the Premises to public or private non-conservation purposes; and

Return to:
**City of Newton Law Department
1000 Commonwealth Avenue
Newton Centre, MA 02459**

6. The enhancement of the protections afforded the Premises by Article 97 of the amendments to the constitution of the Commonwealth of Massachusetts, by establishing a conservation restriction enforceable in perpetuity by the Grantee under sections 31-33 of chapter 184 of the General Laws.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. *Prohibited Acts and Uses.*

Subject to the exceptions set forth herein, the Grantor will not perform or permit the following acts or uses which are prohibited on, above, and below the Premises:

1. Constructing, placing or allowing to remain any temporary or permanent building, tennis or other gaming court, landing strip, mobile home, swimming pool, road, asphalt or concrete pavement [except as reasonably necessary in providing access to the Premises for persons with disabilities and in connection with the activities permitted under Paragraph B.6], sign, billboard or other advertising display, antenna, light or utility pole, tower, conduit, line, satellite dish or other temporary or permanent structure or facility on, above or under the Premises.
2. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise make topographical changes to the area, without the express written permission of the Conservation Commission.
3. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other substance or material whatsoever or the installation of underground storage tanks.
4. Cutting, removing or otherwise destroying trees, grasses or other vegetation except as approved by the Conservation Commission [or as reasonably necessary in connection with activities permitted under paragraph B].
5. Activities detrimental to drainage, flood control, wildlife habitat, water conservation, water quality, erosion control, soil conservation, archaeological conservation, or scenic views.
6. Use by, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, off-road vehicles, scooters, snowmobiles or any other motorized vehicle on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their lawful duties; provided, however, that individual transportation aids necessary for the mobility of persons with disabilities shall be permitted.

7. Subdivision; conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel.
8. Any other use of the Premises or activity thereon which is inconsistent with the purposes of this conservation restriction or which would materially impair the purposes of this Conservation Restriction, including its conservation or public passive recreation interests.

B. *Reserved Rights and Exceptions.*

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction.

1. Use of the Premises for passive recreation, or other conservation use, and any activity or use reasonably accessory or incidental thereto, including without limitation the construction and maintenance of trails, fences, gates, informational signs, kiosks and other site amenities, preferably constructed of natural materials.
2. Use of the Premises by the general public for education, nature study, fishing, and passive recreation in accordance with rules and regulations as may be adopted by the Parks and Recreation Commission and the Conservation Commission, and the right to pass and repass upon the Premises on foot for the purposes of walking, nature study, birdwatching, fishing or other passive recreation.
3. Use of the conservation area to conduct any activity which is consistent with accepted conservation land and water management practices, including, but not limited to, the selective *de minimis* pruning and cutting of trees, brush, invasive or nuisance species to prevent, control or remove hazards, disease, insect damage or fire, or to preserve or improve the condition of the conservation area, including woods, trails; provided that no activity set forth in this paragraph B.3. shall be allowed unless it is done in accordance with a plan approved in writing in advance by Grantee and the Conservation Commission, said plan being intended to protect the conservation and passive recreation values of the conservation area, including without limitation, water quality, scenic and wildlife habitat values.
4. Management of the conservation area for the benefit of wildlife (including without limitation the planting and cultivation of wildlife cover and food crops), and cutting, mowing, pruning, burning, and removal of vegetation to

enhance and promote varied types of wildlife habitat consistent with sound wildlife and forestry management practices.

5. Replacement of dead vegetation with noninvasive native species for the purpose of maintaining the physical and visual buffer in perpetuity with prior approval of Grantee and the Conservation Commission; and removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
6. The creation (marking and clearing) in a location approved by the Conservation Commission and maintenance by the Grantor of a footpath, together with a shoreline vegetated buffer.
7. The erection, maintenance, and replacement of signs with respect to trespass, trail access, the Grantee's interest in the Premises, and the protected conservation values.
8. Such other non-prohibited activities requested by the Grantor and expressly approved in writing by the Grantee, in its sole and exclusive discretion, which permission may only be given if the Grantee expressly finds that the activity is consistent with, and does not materially impair, the purposes or conservation values of the Premises.

The exercise of any right reserved by Grantor under this paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

- C. *Notice and Approval.* Whenever notice to or approval by Grantee is required under the provisions of paragraphs A or B, Grantor shall notify Grantee in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this conservation restriction. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within 60 days of receipt of Grantor's written request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction. Failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this conservation restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction. Notwithstanding the foregoing, for any dispute or claim arising out of or relating to the terms of the conservation restriction which cannot be resolved in good faith directly between the Grantor and Grantee, no action shall be filed or prosecuted in any court until the claim or dispute has first been submitted to a mediator, mutually selected by the parties hereto, for at least five hours of mediation. All parties shall share the cost and fees associated with the mediation services equally unless otherwise agreed. The mediator's determinations shall not be binding upon any party. If the mediation is not concluded within thirty days from the time that a dispute is presented to the grantor or grantees, then the party raising the dispute may file an action despite the failure to complete the mediation.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred.

B. Non-Waiver

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this conservation restriction, the Grantee does not undertake any liability of obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond Grantor's Control.

Nothing contained in this Conservation Restriction shall be construed to entitle Grantees to bring any action against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including, but not limited to fire, flood, storm and earth movement, acts of war whether declared or undeclared, acts of criminals or enemies of the United States, or actions taken in response thereto, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the conservation area resulting from such causes.

IV. ACCESS

In addition to access rights granted to the public generally under Section B.2., the Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation thereof.

V. EXTINGUISHMENT

A. If circumstances arise in the future which render the purposes of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall not be entitled to a portion of the proceeds. Grantor agrees to use the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Grantor/Grantee Cooperation Regarding Public Action.

Whenever all or any part of the Conservation Area or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds. Grantor and Grantee shall use all proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. ASSIGNABILITY

A. Running of the Burden

The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agrees itself to execute any such instruments upon request.

C. Running of the Benefit.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor divests himself of any interest in all or a portion of the Premises, including a leasehold interest and to notify the Grantee within 20 days of such transfer. Failure to do so shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after its ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer if in violation of this Conservation Restriction, shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, Grantee shall within twenty (20) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of the Grantor contained in this Conservation Restriction

IX. NON-MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to ensure that merger does not occur.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts. Any amendments to this Conservation Restriction shall occur only in exceptional circumstances. Amendments will only be considered to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs, and, if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex South District Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and Grantee have executed it, the administrative approvals required by Section 32 of Chapter 1984 of the General Laws have been obtained, and it has been recorded in the Middlesex South Registry of Deeds. This Conservation Restriction shall be recorded in a timely manner.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: City of Newton
 Parks and Recreation Commissioner
 70 Crescent Street
 Newton, MA 02466

With a copy to: City of Newton Conservation Commission
 1000 Commonwealth Avenue

Newton, MA 02459

To Grantee: Newton Conservators, Inc.
 P.O. Box 590011
 Newton Centre, MA 02459

Or to such other address as any of the above parties shall designate from time to time by written notice to the other or that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law.

The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction

Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Massachusetts General Laws Chapter 184, Sections 31-33. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability

If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement

This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-Existing Public Rights

Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

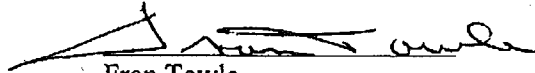
B. Documentary Stamps

No documentary stamps are required as the City of Newton is a party to this instrument.

Executed under seal pursuant to M.G.L. Chapter 184, Section 32 this 18th day of July, 2007.

CITY OF NEWTON

Recommended:



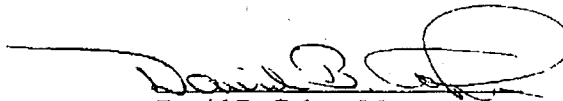
Fran Towle
Commissioner of Parks & Recreation

Approved:

Approved as to form:



Assistant City Solicitor



David B. Cohen, Mayor

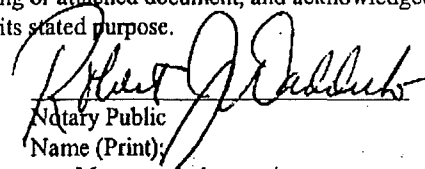
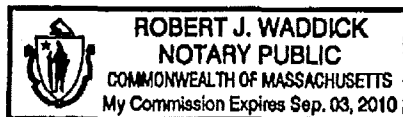
Commonwealth of Massachusetts

Middlesex County, ss

July 18, 2008

On this 18th day of July 2008, before me, the undersigned notary public, personally appeared Fran Towle, as Commissioner of Parks and Recreation, proved to me through satisfactory evidence of identification, which was/were [type of evidence] personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]



Notary Public
Name (Print):

My commission expires:

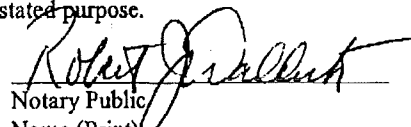
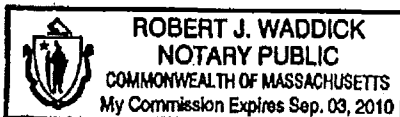
Commonwealth of Massachusetts

Middlesex County, ss

July 18, 2008

On this 18th day of July 2008, before me, the undersigned notary public, personally appeared David B. Cohen, Mayor, acting for the City of Newton, proved to me through satisfactory evidence of identification, which was/were [type of evidence] personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]



Notary Public
Name (Print):

My commission expires:

ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 17th day of July, 2008.

NEWTON CONSERVATORS, INCORPORATED

By: Beth Schroeder
Beth Schroeder, President

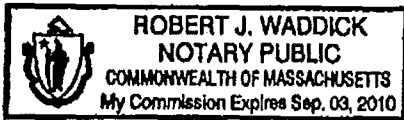
Commonwealth of Massachusetts

Middlesex County, ss July 17, 2008

On this 17th day of July 2008, before me, the undersigned notary public, personally appeared Beth Ellen Schroeder, acting for the Newton Conservators, Incorporated, proved to me through satisfactory evidence of identification, which was/were [type of evidence] MA Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Robert J. Waddick
Notary Public
Name (Print):
My commission expires:



APPROVAL AND ACCEPTANCE BY BOARD OF ALDERMEN
CITY OF NEWTON (GRANTOR)

I, the undersigned Clerk of the Board of Aldermen of the City of Newton, Massachusetts, hereby attest and certify that at a meeting duly held on April 7, 2008 the Board of Aldermen voted to approve and accept the foregoing Conservation Restriction and Easement pursuant to M. G. L. Chapter 40, Section 8C.

Attest: Clerk of the Board of Aldermen,
City of Newton, Massachusetts:




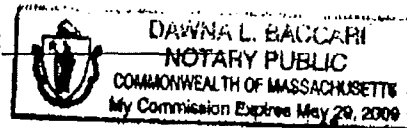
COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

July 21, 2008

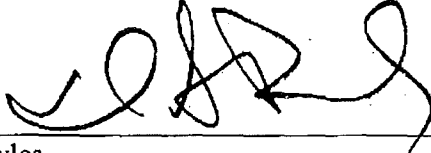
On this 21st day of July, 2008, before me, the undersigned Clerk of the Board of Aldermen, City of Newton, proved to me through satisfactory evidence of identification, which was/were [type of evidence] MA LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily, in such capacity, for its stated purpose.


NOTARY PUBLIC
My Commission Expires:



**APPROVAL BY
SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Newton Conservators, Incorporated has been approved in the public interest pursuant to M.G.L. Chapter 184 Section 32.



Ian A. Bowles
Secretary of Energy and Environmental Affairs

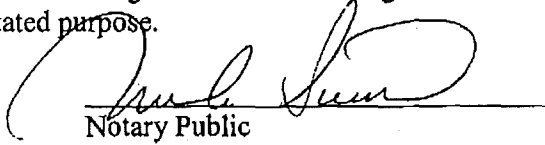
Commonwealth of Massachusetts

Suffolk
Middlesex County, ss

Sept 15, 2008

On this 15th day of September 2008, before me, the undersigned notary public, personally appeared Ian A. Bowles, the Secretary of Energy and Environmental Affairs, acting for Executive Office of Environmental Affairs, proved to me through satisfactory evidence of identification, which was/were [type of evidence] personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]



Notary Public

Name (Print):

My commission expires: 12/15/2011

Exhibit A

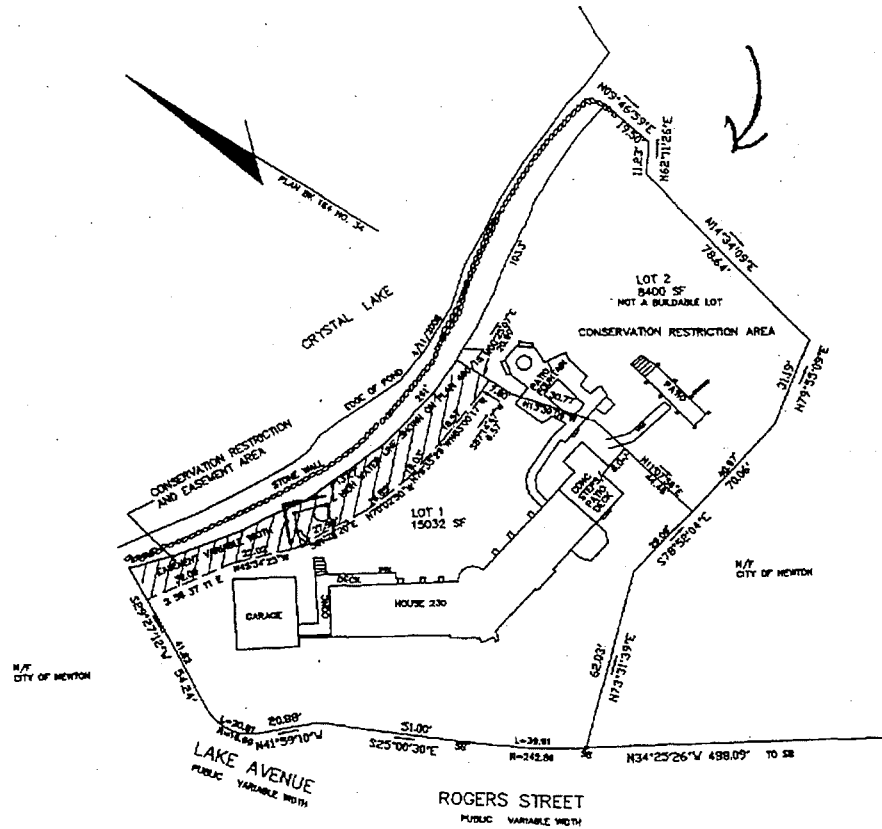
APPROVAL OF THIS PLAN UNDER THE SUBDIVISION CONTROL LAW IS NOT REQUIRED

DATE _____

ENDORSEMENT OF THIS PLAN IS NOT A DETERMINATION AS TO CONFORMANCE WITH ZONING REGULATIONS

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS

DATE _____



- NOTES
1. DEED REFERENCE BOOK 51395 PAGE 302
 2. PLAN REFERENCE PLAN NO. 1320 OF 1950
PLAN BOOK 400 PAGE 15
PLAN BOOK 164 PAGE 34
 3. OWNER OF RECORD SEMYON DUKACH
 4. LOT 2 IS TO BE CONVEYED TO THE CITY OF NEWTON

PLAN OF LAND SHOWING LOT DIVISION,
CONSERVATION RESTRICTION AREA, AND
CONSERVATION RESTRICTION AND EASEM
230 LAKE AVENUE
NEWTON MASSACHUSETTS
AUGUST 28, 2008 SCALE 1"=20'
CITY OF NEWTON D.P.W. ENGINEERING DI
1000 COMMONWEALTH AVENUE NEWTON M
LOUIS M. TAVERNA P.E. CITY ENGINEER

