

CITY OF NEWTON

IN CITY COUNCIL

December 2, 2019

ORDERED:

That, in accordance with the recommendations of the Community Preservation Committee, through its Chair Mark Armstrong, the Finance Committee through its Chair Leonard J. Gentile and the Zoning & Planning Committee through its Chair Susan Albright, the sum of fifteen thousand dollars (\$15,000) be and is hereby appropriated from the Community Preservation Fund as shown below to be expended under the direction of the Planning & Development Department for a grant for the Newton Conservators, for costs associated with holding the required conservation restriction on open space acquired with community preservation funds at Kessler Woods.

FROM: CPA Open Space Budget Reserves
(58A10498-57900D)..... \$15,000

TO: Kessler Woods-Newton Conservators
(58A11406-579500) \$15,000

Under Suspension of Rules
Readings Waived and Approved
24 Yeas 0 Nays 0 Absent



(SGD) DAVID A. OLSON
City Clerk



(SGD) RUTHANNE FULLER
Mayor

Date: 1/7/20



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

Community Preservation Committee Funding Recommendation for Conservation Restriction Grant to Newton Conservators

date: 20 September 2019
from: Community Preservation Committee
to: The Honorable City Council

PROJECT GOALS & ELIGIBILITY

This request is for costs associated with monitoring and enforcing a permanent conservation restriction on the [Kessler Woods](#) parcels in south Newton acquired by the City of Newton with CPA funds in 2003-2004, as documented under [Proposals & Projects](#) at www.newtonma.gov/cpa.

This restriction is required, and this funding is allowed, as follows by the Community Preservation Act:

MGL Ch. 44B, Section 12. (a): A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired. The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The permanent restriction may also run to the benefit of a nonprofit organization, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. **The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on the property.**

The current request reflects the Conservators' past experience and expected costs associated with holding this restriction. The Conservators will manage and report on these CPA funds separately from their other operating funds.

RECOMMENDED FUNDING

On 10 September 2019 by a vote of 6-0 (members Peter Sargent and Rick Kronish absent; member Dan Brody abstaining as a member of the Newton Conservators board) the Community Preservation Committee recommended appropriating the requested \$15,000 for this purpose, from the Community Preservation Fund's fy20 budget reserve for open space, to the control of the Planning & Development Department for a grant to the Newton Conservators.

SPECIAL ISSUES CONSIDERED BY THE CPC

The Newton Conservators already hold the CPA-required restrictions on other properties acquired by the City of Newton using CPA funds. Most recently, in January 2019 the Council approved \$30,000 recommended by the

website www.newtonma.gov/cpa

contact Alice E. Ingerson, Community Preservation Program Manager

email aingerson@newtonma.gov *phone* 617.796.1144

CPC for grants to the Conservators toward the costs of holding two other required restrictions on CPA-funded land acquisitions: [20 Rogers Street](#) (Crystal Lake) and [30 Wabasso Street](#) (Flowed Meadow Conservation Area, Auburndale). The Wabasso Street restriction has now been recorded at the Registry of Deeds. As of the date of this recommendation, the restrictions for Rogers Street and Kessler Woods have received most of their required local approvals and have been approved in final form by the Massachusetts Executive Office of Energy and Environmental Affairs. Only a few additional steps are required before these two restrictions can also be recorded at the Registry.

Finally, the state's standard language for conservation restrictions requires the landowner, in this case the City of Newton, to reimburse the restriction holder, in this case the Conservators, for the legal costs of enforcement if a court finds that a restriction has been violated. To supplement that requirement, the CPC has also recommended some specific provisions below for a combined grant agreement governing the CPA funds held by the Conservators for the restrictions on 30 Wabasso Street, 20 Rogers Street, and Kessler Woods.

ADDITIONAL RECOMMENDATIONS *(funding conditions)*

1. These funds should be appropriated to the Planning & Development Dept. for a grant to the Newton Conservators.
2. Funds should be released in full to the Newton Conservators upon execution of a grant agreement, which among other provisions should require the Conservators to track these funds separately for their intended, CPA-eligible uses and to report to the City periodically on these restricted funds.
3. While acknowledging the Conservators' legal right and responsibility to enforce this restriction, the grant agreement should also aim to minimize direct costs to the Conservators by requiring them to notify the City before either contracting for services by a third party, in case the City itself can provide these services, or taking legal action against a private abutter, to give the City itself as the landowner the opportunity to enforce the restriction. The agreement should also commit the City and the Conservators to participate in a dispute resolution process before any legal action is taken against the City itself.
4. The CPC assumes all recommended funds will be appropriated within 3 months, and this restriction will be recorded at the Registry of Deeds within 6 months, after the date of this recommendation. If either of these deadlines cannot be met, the City should request an extension of that deadline.
5. Any CPA funds appropriated but not used for the purposes stated herein will be returned to the Newton Community Preservation Fund.

KEY OUTCOMES

The Community Preservation Committee will evaluate this appropriation based on how well it meets goals 2, 3 and 4 above, and on how effectively the City collaborates with the Newton Conservators to prevent, and if necessary, to correct promptly, any violations of these conservation restrictions.

ATTACHMENTS

(delivered to the clerks of the Zoning & Planning and Finance Committees)

- Proposal submitted to the CPC, also available from [Proposals & Projects – Pending](#) at www.newtonma.gov/cpa, or from this direct link:
<http://www.newtonma.gov/civicax/filebank/blobdload.aspx?t=42622.49&BlobID=98219>

Kessler Woods Conservation Restriction-- Summary

The Kessler Woods Conservation Restriction covers 4 parcels of land totaling 12.45 acres, located near Vine and LaGrange Streets in Newton (the "Premises"). One of the parcels, which is comprised of approximately 444 sq. ft., is located within the limits of the City of Boston. These parcels were acquired by the City of Newton from Boston Edison in 2004 using \$5,000,000 in Community Preservation Act Funds. The Conservation Restriction ("CR") will be granted to the Newton Conservators, Incorporated, a nonprofit organization in Newton which promotes protection of natural areas. The parcels are open space and heavily wooded.



This CR insures that the parcels will be permanently maintained in a natural and scenic condition. Permitted activities include outdoor passive recreational activities such as hiking and nature study. Examples of prohibited activities are the construction of structures, cutting of vegetation, removal of soil and parking or storage of motorized vehicles. Nature trails will be upgraded and built.

As of 16 September 2019, the Conservation Restriction has been approved by the state's Executive Office of Energy and Environmental Affairs (the "EEA") and the Newton Conservators. It still needs local approvals from Newton's Conservation Commission, City Council and Mayor. The EEA also requires Municipal Certifications approved and signed by Newton's Conservation Commission and Boston's Conservation Commission, respectively, certifying that the Conservation Restriction is in the public interest. Once these approvals are completed, it will be returned to the state for signature before being recorded at the Registry of Deeds.

The Community Preservation Committee's recommendation to appropriate \$15,000 in CPA funds for a grant to the Newton Conservators, to cover their expenses in managing and monitoring this CR, has now been docketed with the City Council.

For all Conservation Restrictions: The Community Preservation Act, M.G.L c. 44B, § 12a, requires that property acquired using CPA funds be bound by a permanent conservation restriction. Conservation Restrictions ("CR") for Newton's CPA acquisitions are granted to the Newton Conservators. Past examples include Angino Farm (2005) and Waban Hill Reservoir (2015). Approval procedures are the same for all of these CRs.



July 26, 2019

Officers

Ted Kuklinski, President
Chris Hepburn, Vice President
AnnaMaria Abernathy, Secretary
Katherine Howard, Treasurer
Beth Wilkinson, Past President

Board of Directors

David Backer
Peter Barrer
Barbara Bates
Dan Brody
Bonnie Carter
Michael Clarke
Margaret Doris
Henry Finch
Robert Fizek
Maurice Gilmore
Daniel Green
William Hagar
Ken Mallory
George Mansfield
Nyssa Patten
Larry Smith

Advisors

Margaret Albright
Lisle Baker
John Bliss
Lee Breckenridge
Lalor Burdick
Lucy Caldwell-Stair
Michael Collora
Ann Dorfman
Bart Hague
Judith Hepburn
Alison Leary
William Leitch
Don Lubin
Brooks Mathewson
Eric Olson
Anne Pearson
Richard Primack
Eric Reenstierna
Jon Regosin
Patricia Robinson
Jane Sender
William Shaevel
Willis Wang
Bruce Wenning

Newton Community Preservation Committee
Planning & Development Department
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Dear CPC Committee Members,

The Board of Directors of the Newton Conservators attests that our nonprofit 501(c)(3) organization agrees to accept and to hold a permanent deed restriction on the following property owned by the City of Newton: Kessler Woods (0 Vine St, 200 LaGrange St, Newton, MA 02467).

Our acceptance is conditional upon receiving a total of \$15,000 for monitoring the land and for enforcing the restriction in perpetuity.

We request that the money be made in one payment amount that our organization can invest to help ensure that there will be sufficient funds in perpetuity to cover our expenses associated with Kessler Woods. We will use those funds only for monitoring or enforcement on that property (and other CPA-funded land acquisitions), will account for the funds separately, and will submit documentation to the City Solicitor for all expenses incurred in that work. The Newton Conservators will submit our monitoring reports to the environmental planners/Conservation Commission in the Planning Department.

Sincerely,

Theodore Kuklinski, President

Katherine Howard, Treasurer

on behalf of the Board of the Newton Conservators

City of Newton



Ruthanne Fuller
Mayor

Newton, Massachusetts Community Preservation Program FUNDING REQUEST

PRE-PROPOSAL

PROPOSAL

(For staff use)
date rec'd:

26 July 2019

Last updated June 2019.

Please submit this completed file directly – do not convert to PDF or other formats.

For full instructions, see www.newtonma.gov/cpa or contact us:

Community Preservation Program Manager,
City of Newton Planning & Development Department, 1000 Commonwealth Ave., Newton, MA 02459
aingerson@newtonma.gov 617.796.1144

You may adjust the space for each question, but the combined answers to all questions on this page must fit on this page.

Project TITLE	Funding to Hold Conservation Restrictions on Newton CPA-Funded Land Acquisitions			
Project LOCATION	Full street address (with zip code), or other precise location. Site title below links to CPC project webpage. Kessler Woods: 0 Vine St, 200 LaGrange St, Newton, MA 02467			
Project CONTACTS	Name & title or organization	Email	Phone	Mailing address
Project Manager	Ted Kuklinski, President, Newton Conservators	tkuklinski@aol.com	617.763.3470	24 Henshaw Terrace West Newton, MA 02465
Other Contacts	Beth Wilkinson, Past President, Newton Conservators	bethwilkinson@mac.com	617.966.7491	14 Trowbridge Street, Newton, MA 02459
Project FUNDING	A. CPA funds requested: \$15,000	B. Other funds to be used: \$0	C. Total project cost (A+B): \$15,000	
Project SUMMARY	Explain how the project will use the requested CPA funds.			
<p>The Newton Conservators are requesting this grant for the costs associated with holding, monitoring and enforcing permanent conservation restrictions on the property listed above, which the City of Newton previously acquired with CPA funds for open space.</p> <p>The City has already granted the Conservators similar restrictions on other open space or outdoor recreation properties acquired with CPA funds in Newton, as required by the CPA statute [MGL Ch. 44B. Section 12. (a)]:</p> <p style="padding-left: 20px;">“A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired. The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The permanent restriction may also run to the benefit of a nonprofit organization, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on the property.”</p> <p>Funds should be appropriated to the Planning Dept. for this grant. Among other provisions to be mutually agreed, the grant agreement should specify that these funds will be held directly by the Conservators. The Conservators will use the funds only for monitoring or enforcement on this property, will account for the funds separately, and will submit documentation to the City Solicitor for all expenses incurred in that work. The Newton Conservators also will submit their monitoring reports to the environmental staff/Conservation Commission in the Planning.</p>				

You may adjust the space for each question, but the combined answers to all questions on this page must fit on this page.

Project TITLE		Funding to Hold Conservation Restrictions on Newton CPA-Funded Land Acquisitions	
USE of CPA FUNDS		OPEN SPACE	or
Acquire		✓	✓
PROJECT BUDGET			
Uses of Funds			
Kessler Woods– monitoring (est. 541,779 sq ft or 12.4 acres)			\$15,000
Note: Of the total est. 21 acres acquired with CPA funds at Kessler Woods, only 12.4 acres are owned in fee by the City of Newton, requiring a conservation restriction held by the Newton Conservators. The City itself holds conservation restrictions / public access easements on the remainder.			
D. TOTAL USES (should equal C. on page 1 and E. below)			\$15,000
Sources of Funds		Status (requested, expected, confirmed)	
CPA funding		Requested	
E. TOTAL SOURCES (should equal C. on page 1 and D. above)			\$15,000
Project TIMELINE		Phase or Task	Season & Year
		full proposal submitted & CPC funding vote	fall 2019
		City Council consideration of CPC recommendation	fall 2019
↓ Check off submitted attachments here.			
REQUIRED	✓	PHOTOS & MAPS	of site
	SPONSOR FINANCES & QUALIFICATIONS, INSTITUTIONAL SUPPORT		
	from Newton Conservators:		
	✓	cover letter confirming Board of Directors agreement to hold permanent deed restriction, briefly explaining internal procedures for use of these funds	
	✓	summary of most recent annual operating budget (revenue & expenses) or financial statement (assets & liabilities)	
	from City of Newton:		
	✓	summary of Kessler Woods CR, photos	
	✓	Kessler Woods site plans	
✓	Board order appropriating CPA funds for land acquisition at Kessler Woods (2003)		

more Kessler
Woods photos



more Kessler
Woods photos



DEED REFERENCE:

DEED BOOK 12521 PAGE 286 RECORDED AT THE MIDDLESEX COUNTY REGISTRY OF DEEDS.

PLAN REFERENCE:

PLAN OF LAND IN NEWTON, MASS. DATED JANUARY 21, 1965, SCALE 1"=60' BY BARNES ENGINEERING COMPANY RECORDED AS PLAN 841 (SHEETS A-D) OF 1967 IN DEED BOOK 11363 PAGE 245.

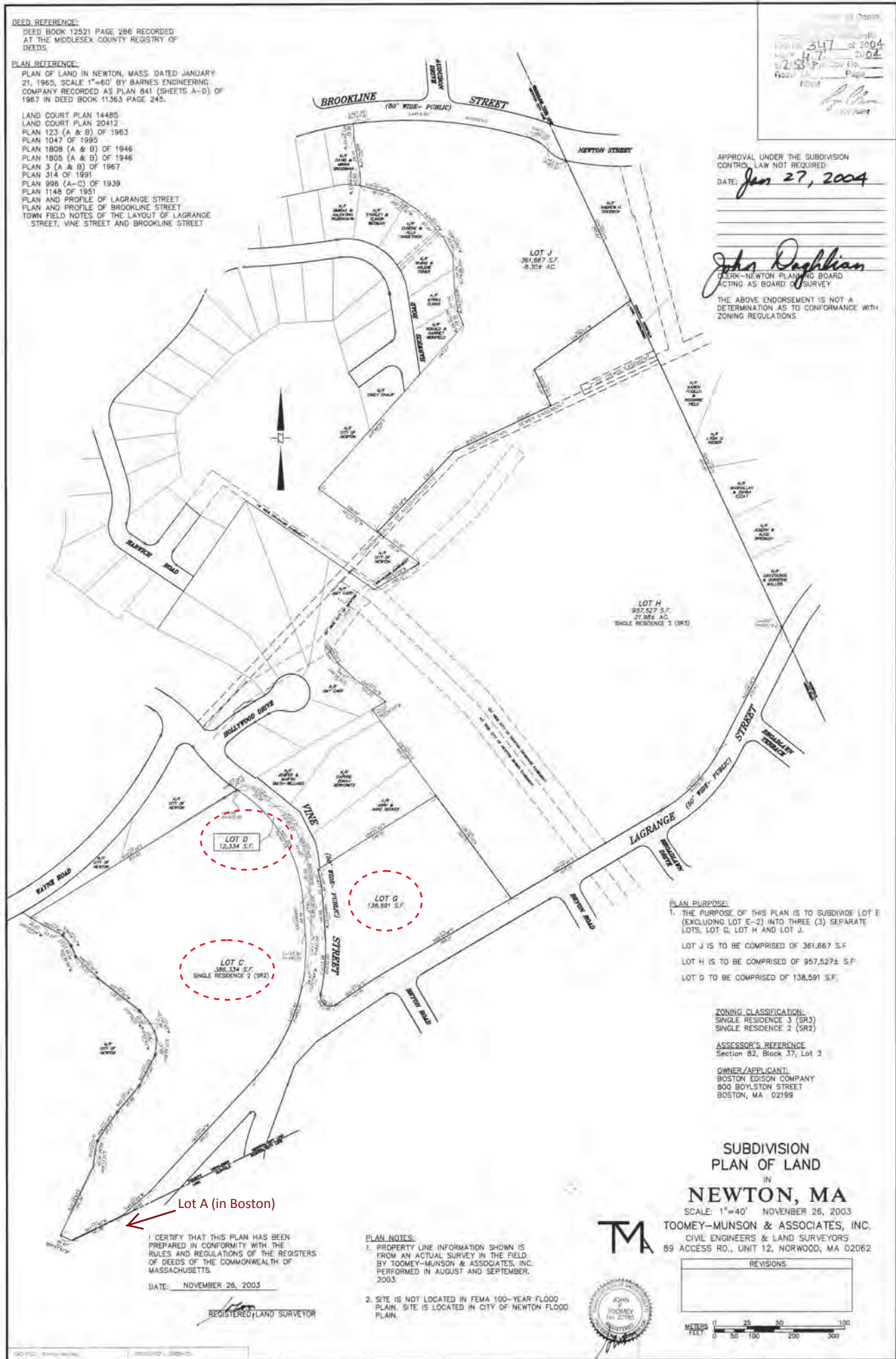
LAND COURT PLAN 14485
LAND COURT PLAN 20412
PLAN 123 (A & B) OF 1963
PLAN 1047 OF 1995
PLAN 1808 (A & B) OF 1946
PLAN 1805 (A & B) OF 1946
PLAN 3 (A & B) OF 1967
PLAN 314 OF 1991
PLAN 996 (A-C) OF 1939
PLAN 1149 OF 1951
PLAN AND PROFILE OF LAGRANGE STREET
TOWN FIELD NOTES OF THE LAYOUT OF LAGRANGE STREET, VINE STREET AND BROOKLINE STREET

347 of 2004
4.7.04
2:53 PM
Page

APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED
DATE: Jan 27, 2004

John DeGhlian
LESLIE-NEWTON PLANNING BOARD
ACTING AS BOARD OF SURVEY

THE ABOVE ENDORSEMENT IS NOT A DETERMINATION AS TO CONFORMANCE WITH ZONING REGULATIONS



PL# 347

PLAN PURPOSE:
1. THE PURPOSE OF THIS PLAN IS TO SUBDIVIDE LOT E (EXCLUDING LOT E-2) INTO THREE (3) SEPARATE LOTS, LOT G, LOT H AND LOT J.
LOT J IS TO BE COMPRISED OF 361,667 S.F.
LOT H IS TO BE COMPRISED OF 957,527± S.F.
LOT D TO BE COMPRISED OF 138,591 S.F.

ZONING CLASSIFICATION:
SINGLE RESIDENCE 3 (SR3)
SINGLE RESIDENCE 2 (SR2)

ASSESSOR'S REFERENCE
Section 82, Block 37, Lot 3

OWNER/APPLICANT:
BOSTON EDISON COMPANY
600 BOYLSTON STREET
BOSTON, MA 02199

SUBDIVISION PLAN OF LAND IN NEWTON, MA

SCALE: 1"=40' NOVEMBER 26, 2003
TOOMEY-MUNSON & ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
89 ACCESS RD., UNIT 12, NORWOOD, MA 02062

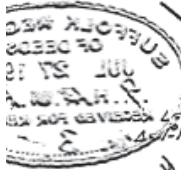
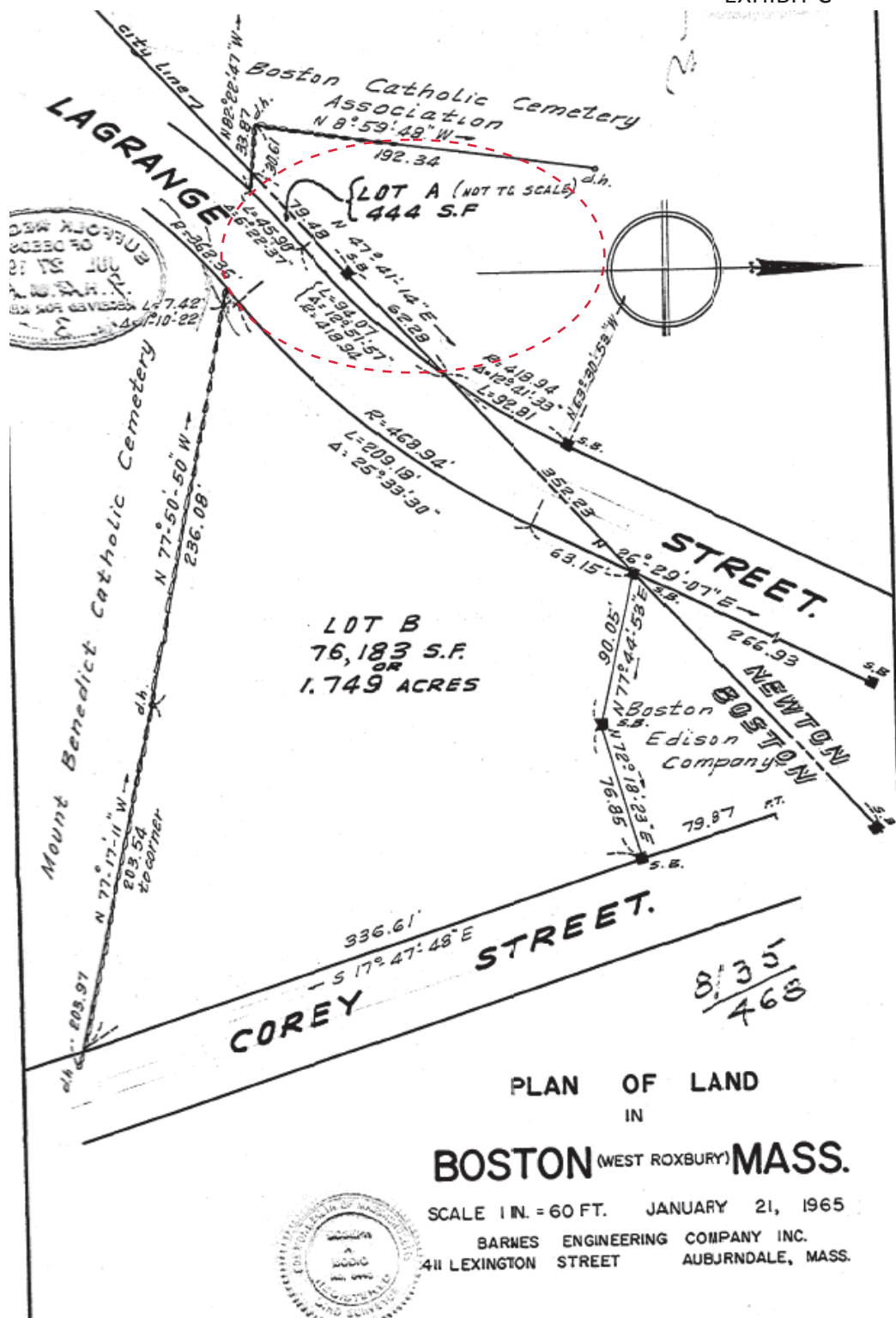
Table with 2 columns: REVISIONS, and empty rows for recording changes.



I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.
DATE: NOVEMBER 26, 2003
REGISTERED LAND SURVEYOR

PLAN NOTES:
1. PROPERTY LINE INFORMATION SHOWN IS FROM AN ACTUAL SURVEY IN THE FIELD BY TOOMEY-MUNSON & ASSOCIATES, INC. PERFORMED IN AUGUST AND SEPTEMBER, 2003.
2. SITE IS NOT LOCATED IN FEMA 100-YEAR FLOOD PLAIN. SITE IS LOCATED IN CITY OF NEWTON FLOOD PLAIN.





PLAN OF LAND
IN
BOSTON (WEST ROXBURY) **MASS.**

SCALE 1 IN. = 60 FT. JANUARY 21, 1965
BARNES ENGINEERING COMPANY INC.
411 LEXINGTON STREET AUBURNDALE, MASS.

8135
468

CITY OF NEWTON

IN BOARD OF ALDERMEN

June 2, 2003

ORDERED:

That in accordance with the recommendations of the Community Preservation Committee, through its Chairman, Jeffrey Sacks; the Board of Aldermen Ad Hoc Community Preservation Committee, through its Chairman, Alderman Amy Sangiolo; and the Finance Committee through its Chairman, Alderman Paul Coletti: the sum of Five Million Dollars (\$5,000,000) is hereby appropriated, to be expended under the direction and control of His Honor the Mayor for purposes of funding a portion of the proposed bid to Boston Edison for acquisition of the property known as Kessler Woods (parcels ##82-41-22 and #82-37-3) as detailed in the application (dated 12 May 2003) and in the Community Preservation Committee recommendation (dated 14 May 2003), and further, that to meet this appropriation, the Treasurer with the approval of the Mayor is hereby authorized to borrow said amount under and pursuant to Chapter 44, Section 7(3) of the General Laws or pursuant to any other existing authority, and to issue bonds or notes of the City therefor. While any bonds or notes issued pursuant to this order will constitute general obligations of the City as required by law, and a pledge of the City's full faith and credit, it is, nevertheless, the expectation of the City that any such bonds or notes issued pursuant to this order shall be repaid from Community Preservation Funds raised by the City in each year.

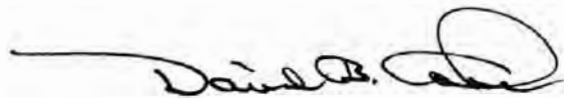
And be it further ORDERED that the Mayor is hereby authorized to take all steps necessary to carry out the purchase of real estate now owned by Boston Edison, located on and near Lagrange Street, as follows: fee purchase of the southern parcel (Assessors' parcel #82-41-22) and the southern portion of the northern parcel (Assessors' parcel #82-37-3) consisting of approximately 2.4 acres; and conservation easements, restrictions and/or such other real estate interests in the remaining areas of the northern parcel as the Mayor deems appropriate.

Under Suspension of Rules
Readings Waived and Adopted
22 yeas 1 nay (Ald. Salvucci) 1 excused (Ald. Fischman)

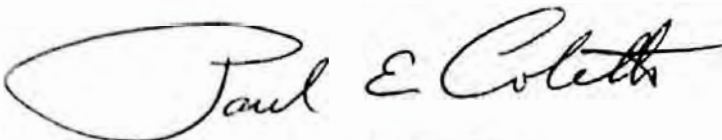
EXECUTIVE DEPARTMENT
Approved: June 4, 2003



(SGD) EDWARD G. ENGLISH
City Clerk



(SGD) DAVID B. COHEN
Mayor



(SGD) PAUL E. COLETTI
Chairman, Finance Committee

