

# Southern Middlesex - 20/20 Perfect Vision i2 Document Detail Report

Current datetime: 6/5/2018 2:19:16 PM

Doc#	Document Type	Town	Book/Page	File Date	Consideration
320535	AMENDMENT		44360/413	12/23/2004	
<b>Property-Street Address and/or Description</b>					
<b>Grantors</b>					
NEWTON CITY OF, NEWTON CONSERVATORS INC, WILMERDING ALEXANDER					
<b>Grantees</b>					
<b>References-Book/Pg Description Recorded Year</b>					
34362/68 DEED 2001					
<b>Registered Land Certificate(s)-Cert# Book/Pg</b>					



AMENDMENT AND ASSIGNMENT OF CONSERVATION RESTRICTION

This Amendment and Assignment of Conservation Restriction is made as of the 20th day of December, 2004 between the City of Newton, Massachusetts, a municipal corporation, acting by and through the Newton Conservation Commission, City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts 02459 ("City"), the Newton Conservators, Incorporated, a Massachusetts nonprofit corporation with an address of P.O. Box 590011, Newton, MA 02459 ("Conservators"), and Alexander Wilmerding, 180 Elgin Street, Newton, MA 02459 ("Original Grantor").

WHEREAS, City is the holder of a certain Conservation Restriction granted by Alexander Wilmerding on November 13, 2001, which was accepted by the Mayor of City on December 7, 2001, following approval and acceptance of the Conservation Commission and the Board of Aldermen of City, and which was recorded at Book 34362, Page 68 in the Middlesex South District Registry of Deeds on December 19, 2001 ("Conservation Restriction");

WHEREAS, the Conservation Restriction encumbers a certain portion of property more fully described as Lot B on a plan entitled "Subdivision of Land in Newton, Belonging to Stephen A. Stone", dated September, 1971, Avis Airmap Project #619, Scale 1" = 50 ft., recorded with the Middlesex South Registry of Deeds as Plan 1445 of 1971, a copy of which appears at Book 12129, Page 192 of said Registry (all of the land shown as Lot B to be defined herein as the "Property");

WHEREAS, Newton Conservators, Incorporated, acting jointly with the Newton Conservation Commission, proposed the expenditure of the City's Community Preservation Funds for the City's purchase of the fee interest in the Property, together with certain rights and legal interests reserved by the Original Grantor in the Conservation Restriction; and

WHEREAS, the City approved the appropriation of Community Preservation funds for open space conservation purposes as described in the following documents: 1) Memorandum from Community Preservation Committee to Board of Aldermen dated February 19, 2003; 2) Ad Hoc Community Preservation Committee Report dated March 13, 2003; 3) Memorandum from Jeffrey Sacks, Chair, Community Preservation Committee to Board of Aldermen re: "Amendments to CPC Recommendations" dated April 7, 2003 and 4) Order #126-03 of the Board of Aldermen (collectively, "Appropriation Requirements"); and

WHEREAS, the Appropriation Requirements and the Community Preservation Act, M.G.L. c. 44C, §12 require that the City grant a conservation restriction in any lands acquired by Community Preservation funds for open space purposes to a non-profit corporation recognized in accordance with Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (hereinafter, the "Code"); and

WHEREAS, Newton Conservators, Incorporated is a Massachusetts non-profit corporation, a publicly supported charitable organization in accordance with Sections 501(c)(3) and 170(b)(1)(A)(vi) of the Code, a "qualified organization" under Section 170(h) of the Code

9F2004  
09  
Elgin Street, Newton, MA SEE PLAN NO. 534 OF 2004

34362 68

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

and a qualified holder of conservation restrictions in accordance with M.G.L. Chapter 184, Sections 31-33; and

WHEREAS, Original Grantor has entered into an agreement with City to convey certain of Grantor's reserved rights and legal interests in the Conservation Restriction and the underlying Property to City as a bargain sale, so-called, in accordance with Section 1011(b) of the Code and Treas. Reg. Section 1.170A-7(a)(2)(ii), subject to (1) an adjustment to the boundary of the Property between Lot B and the adjacent Lot A; and (2) a correction of a miscalculation of the total square footage of the Property; and

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to and intended to benefit from the provisions of Sections 1011(b), 170(c) and 170(h) of the Code, Sections 31 – 33 of Chapter 184 of the General Laws of Massachusetts, and Article 97 of the Constitution of the Commonwealth of Massachusetts, Original Grantor and City hereby amend the Conservation Restriction as follows and the City assigns the Conservation Restriction as follows.

#### A. AMENDMENTS

Original Grantor and City hereby amend the Conservation Restriction in accordance with the following terms:

1. **Boundary Adjustment.** The attached plan entitled "Approval Not Required Subdivision Plan, Elgin Street, Newton, Massachusetts (Middlesex County) Prepared for Alexander Wilmerding" prepared by Welsh Associates Land Surveyors, Inc., dated February 6, 2004 reflects the boundary adjustment between the Property and adjacent property of Original Grantor identified as "Lot A" in the Conservation Restriction. Such boundary adjustment was necessary in order to exclude Original Grantor's lawn area from that portion of the Property which, as a consequence of these amendments to the Conservation Restriction, is to remain in its natural wooded state.
2. **Lot Area Adjustment.** The area of Lot B (being the Property) prior to boundary adjustment is adjusted to reflect an area of 30,704 square feet, thereby correcting an earlier surveying miscalculation which set the area at 31,514.50 square feet.
3. **Limited Building Site.** Original Grantor hereby revokes any and all reserved rights under Paragraph 2.C. of the Conservation Restriction regarding Uses and Activities within the Limited Building Site.
4. **Vista Pruning.** Original Grantor hereby revokes any and all rights under Paragraph 2.B.(2) of the Conservation Restriction regarding Woods Management, including all reserved vista pruning rights.



All other provisions of the Conservation Restriction, as amended herein, are hereby ratified, confirmed and incorporated herein by reference, and shall continue in perpetuity in full force and effect in accordance with such Conservation Restriction.

#### B. ASSIGNMENT

The City hereby assigns all its rights, title, interest and obligations as Grantee under the Conservation Restriction to Newton Conservators, Incorporated, a Massachusetts non-profit corporation, in accordance with the requirements of such Conservation Restriction and the provisions of M. G. L. c. 44B, §12, M.G. L. c. 184, §32 and Section 170(h) of the Code, subject to the adjustments and amendments contained herein. By its acceptance of this Assignment, Conservators agrees and acknowledges that it will continue to carry out the conservation Purpose and protect the conservation values which the original Conservation Restriction intended to advance, and that it will abide by the obligations of Grantee as set out in the original Conservation Restriction, including especially but not limited to those set out at paragraphs 5 and 5.1 thereof.

#### C. WARRANTIES AND REPRESENTATIONS

The parties represent and warrant that each has all the necessary power and authority to enter into this Amendment and Assignment. All actions required to be taken to approve or authorize the execution of this Amendment and Assignment and consummation of the transactions contemplated hereby have been taken and the execution of this Amendment and Assignment and the consummation of the transaction contemplated hereby constitute the valid and binding obligation of the parties. The parties acknowledge that they have not been influenced to enter into this transaction nor relied upon any warranties of representations about tax or legal consequences of the transactions entered into herein which are not set forth or incorporated in this Amendment and Assignment or previously made in writing.

#### D. CONSTRUCTION OF THIS INSTRUMENT

This Amendment and Assignment, which may be executed in multiple counterparts, each counterpart to be deemed an original, is to be construed as a Massachusetts instrument, sets forth the entire agreement between the parties, is binding upon and inures in perpetuity to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be modified or amended only by a written instrument executed by both parties and in accordance with the laws of the Commonwealth of Massachusetts (particularly MGL Chap. 184, Sections 31 – 33 and Article 97 of the Constitution) and the requirements of Section 170(h) of the Code. The captions are used only as a matter of convenience and are not to be considered a part of this Amendment and Assignment or to be used in determining the intent of the parties to it.

#### E. SEPARABILITY CLAUSE

If any provision of this Amendment and Assignment or portion of such provision or the application thereof to any person or circumstance is held invalid, the remainder of the

Amendment and Assignment (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

F. REMEDIES


In addition to any other remedies specifically set forth in this Amendment and Assignment, Grantor and Grantee have the right to enforce the provisions of this Amendment and Assignment through such actions for specific performance, injunctive relief, damages, contribution or any other available proceedings in law or equity contemplated and provided under the Conservation Restriction. The election of any one remedy shall not constitute a waiver of other remedies.

Executed as an instrument under seal on the day and date first written above. The Grantor and Grantee intend that the amendments and assignment arising hereunder take effect on the day and year that this Amendment and Assignment is recorded in the Middlesex South District Registry of Deeds, Massachusetts, after all signatures required by Section 32, Chapter 184 of the General Laws of Massachusetts have been affixed hereto.

CITY OF NEWTON

NEWTON CONSERVATORS,  
INCORPORATED


  
David B. Cohen, Mayor

  
By: Eric Keansterna  
Its: President

Approved as to legal form:

  
Assistant City Solicitor

ORIGINAL GRANTOR:

  
Alexander Wilmerding

(Acknowledgments Follow on Next Page)



Commonwealth of Massachusetts

Middlesex County, ss

August 24, 2004

On this 24, day of August 2004, before me, the undersigned notary public, personally appeared Alexander Wilmerding, proved to me through satisfactory evidence of identification, which was/were [type of evidence] Personal Knowledge, 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.

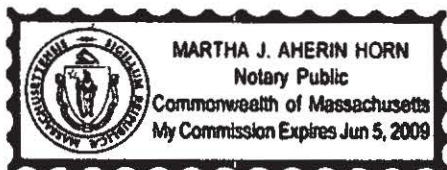
[NOTARY SEAL]

Martha J. Aherin Horn

Notary Public

Name (Print):

My commission expires:



Commonwealth of Massachusetts

Middlesex County, ss

OCTOBER 15, 2004

On this 15<sup>th</sup>, day of OCTOBER 2004, 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] PERSONAL KNOWLEDGE, 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]



Barbara Resnik

Notary Public

Name (Print):

My commission expires:

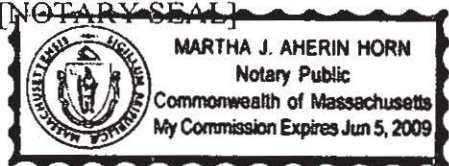
Commonwealth of Massachusetts

Middlesex County, ss

November 19, 2004

On this 19, day of November 2004, before me, the undersigned notary public, personally appeared Eric Penstern acting for the Newton Conservators, Inc., proved to me through satisfactory evidence of identification, which was/were [type of evidence] Personal Knowledge, 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]



Martha J. Aherin Horn

Notary Public

Name (Print):

My commission expires:

APPROVAL BY NEWTON CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of the City of Newton, Massachusetts, hereby certify that at a meeting duly held on August 11, 2004, the Conservation Commission voted to approve the foregoing Amendment and Assignment of Conservation Restriction pursuant to M. G. L. Chapter 40, Section 8C and M.G.L., Chapter 184, Section 32.

[Signature]

Rachel Freed

[Signature]

[Signature]

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX ss.

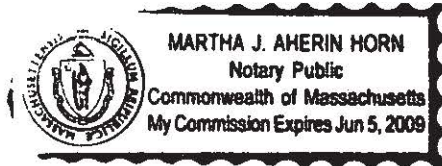
August 31, 2004

On this 31, day of August 2004, before me, the undersigned notary public, personally appeared the above named Douglas Dickson, Rachel Freed, Susan Jusis, Roger Matthews

Commissioners of the Newton Conservation Commission, proved to me through satisfactory evidence of identification, which was/were [type of evidence] personal knowledge, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily, in such capacity, for its stated purpose.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 6/5/09



**APPROVAL AND ACCEPTANCE BY BOARD OF ALDERMEN  
CITY OF NEWTON (GRANTEE)**

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 SEPTEMBER 7, 2004, the Board of Aldermen voted to approve and accept the foregoing Amendment and Assignment of Conservation Restriction pursuant to M. G. L. Chapter 40, Section 8C and M.G.L. Chapter 184, Section 32.

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

Edmund G. English

**COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX ss.**

September 30, 2004

On this 30<sup>th</sup> day of Sept. 2004, 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. 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.

Dawna X Baccari  
NOTARY PUBLIC  
My Commission Expires: 5-29-09



APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS

COMMONWEALTH OF MASSACHUSETTS

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

Date: Dec. 22, 2004

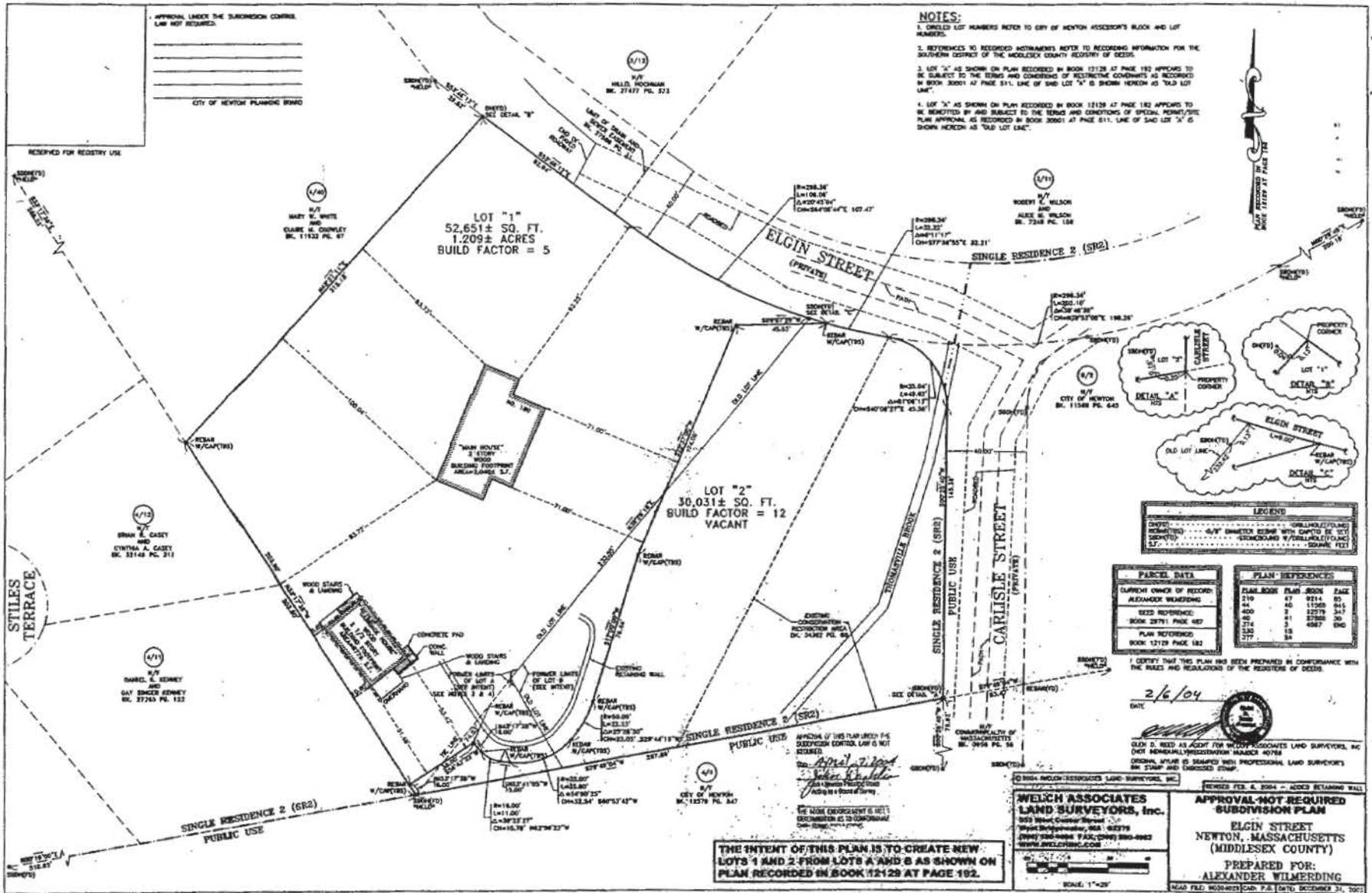
  
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF Suffolk ss.

Dec 20, 2004

On this 20<sup>th</sup> day of December 2004, before me, the undersigned notary public, personally appeared Ellen Roy Herzfelder, acting for the Executive Office of Environmental Affairs, Commonwealth of Massachusetts, 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 she signed it voluntarily, in such capacity, for its stated purpose.

  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_



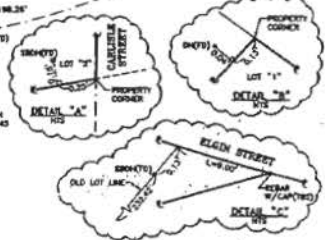
APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED.

CITY OF NEWTON PLANNING BOARD

RECEIVED FOR REGISTRY USE

- NOTES:**
- CIRCLED LOT NUMBERS REFER TO CITY OF NEWTON ASSESSOR'S BOOK AND LOT NUMBERS.
  - REFERENCES TO RECORDED INSTRUMENTS REFER TO RECORDING INFORMATION FOR THE SOUTHERN RECORDS OF THE MIDDLESEX COUNTY REGISTRY OF DEEDS.
  - LOT "A" AS SHOWN ON PLAN RECORDED IN BOOK 12129 AT PAGE 182 APPEARS TO BE SUBJECT TO THE TERMS AND CONDITIONS OF RESTRICTIVE COVENANTS AS RECORDED IN BOOK 30001 AT PAGE 511. LINE OF SAID LOT "A" IS SHOWN HEREIN AS "OLD LOT LINE".
  - LOT "B" AS SHOWN ON PLAN RECORDED IN BOOK 12129 AT PAGE 182 APPEARS TO BE BENEFITED BY AND SUBJECT TO THE TERMS AND CONDITIONS OF SPECIAL PERMIT/SITE PLAN APPROVAL AS RECORDED IN BOOK 30001 AT PAGE 511. LINE OF SAID LOT "B" IS SHOWN HEREIN AS "OLD LOT LINE".

PLAN RECORDED IN PAGE 182



**LEGEND**

(SHOWN) ...	(SHOWN) ...
(SHOWN) ...	(SHOWN) ...
(SHOWN) ...	(SHOWN) ...
(SHOWN) ...	(SHOWN) ...

**PARCEL DATA**

CLARENCE OWNER OF RECORD	ALEXANDER WILBERDING
DEED REFERENCE	BOOK 2870 PAGE 487
PLAN REFERENCE	BOOK 12129 PAGE 182

**PLAN REFERENCES**

PLAN BOOK	PLAN	BOOK	PAGE
219	47	9214	85
400	40	11269	245
412	2	12279	247
2174	11	12386	30
2172	2	4587	540
2172	18		

I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS.

2/6/04

DATE

*Alexander Wilberding*

ALEXANDER WILBERDING

THE INTENT OF THIS PLAN IS TO CREATE NEW LOTS 1 AND 2 FROM LOTS A AND B AS SHOWN ON PLAN RECORDED IN BOOK 12129 AT PAGE 182.

WELCH ASSOCIATES LAND SURVEYORS, Inc.

303 West Chester Road

Newton, Massachusetts 02459

(617) 552-8888 FAX: (617) 550-4882

WWW.WELCHINC.COM

APPROVAL NOT REQUIRED SUBDIVISION PLAN

ELGIN STREET

NEWTON, MASSACHUSETTS (MIDDLESEX COUNTY)

PREPARED FOR: ALEXANDER WILBERDING

SEAL FEB. 6, 2004 - ADDED RETAINING WALL

SEAL FEB. 6, 2004 - ADDED RETAINING WALL