

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

TOWN OF BOLTON,)	
)	
Plaintiff)	
)	
Vs.)	Case No. 19 TL 001139
)	
ALAN DIPIETRO)	
And OCCUPANTS,)	
Defendant)	

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT ALAN DIPIETRO'S MOTION TO VACATE JUDGEMENT

I. INTRODUCTION

Alan DiPietro is an alpaca and hemp farmer in Bolton. Mr. DiPietro has farmed and resided at the locus for nearly 10 years. He planned to build a retirement home for his parents and also live there the rest of his life. The property which consists of five parcels located on Teele Road in Bolton (Worcester County) and on Maple Street in Stow (Middlesex County). Only that portion of Mr. DiPietro's land that falls within the tax jurisdiction of Bolton is the subject of this case.

Mr. DiPietro has struggled with his farming endeavors and he fell behind on his taxes. Thanks in part to actions taken by the Town of Bolton, he has only been able to earn minimal income from his alpaca and hemp farm and subsists largely on SNAP benefits, vegetables he grows and firewood he harvests for his own consumption. Mr. DiPietro has been trying since 2016 to work both with and around the Town of Bolton to sell the First Parcel to redeem the other tax titles.

This year, the U.S. Supreme Court made clear that the practice of a government keeping the surplus value of a property it took to pay delinquent property taxes violates the Takings Clause of the Fifth Amendment. *Tyler v. Hennepin County, Minnesota*, 143 S. Ct. 1369, 1376 (2023) ("us[ing] the toehold of the tax debt to confiscate more property than was due... effected a classic taking in which the government directly appropriates private property for its own use"). The Massachusetts Declaration of Rights and the state's common law principles similarly prohibit the government from taking more in taxes than what it is owed.

Here, as in all property tax foreclosure actions where the property is worth more than the taxes owed, G.L. c. 60 unconstitutionally provided the Town absolute title to the property and gave Mr. DiPietro no method to claim his equity. This unconstitutional taking occurred the moment judgment was entered in favor of the Town. No Process was provided to recoup Surplus.

The Supreme Court's unanimous opinion rejected the notion that state law could be used to sidestep the Due Process Clause, specifically the 5th Amendment's requirement that just compensation be paid when the government completes a taking. Mr. DiPietro did not receive reasonable equivalent value for the "taking" as compensation. The provisions of G.L. c. 60 that allow the transfer of absolute title to the foreclosing entity are unconstitutional and unenforceable by this Court.

The First Parcel (3e-33) is worth well more than the total owed on all five tax title accounts. If the order vacating the judgment of foreclosure of the equity of redemption in the locus is vacated and a judgment shall enter vacating the foreclosure only as to the Second Parcel (4e-43), the Third Parcel (4e-44), the Fourth Parcel (4e-45) and the Fifth Parcel (4e-46), the United States District Court for the District of Massachusetts (Case No. 4:23-CV-40004-ADB) will determine the "surplus" from,

the First Parcel and the process by which it shall be returned to Mr. DiPietro. Such surplus will be used to redeem the vacated tax titles. This will allow Mr. DiPietro to retain his home and farm, thus preserving his equity, which is his entire life's savings.

The loss of the ordinary comforts of human existence, the loss of residence and farm, outweighs the limited fiscal and administrative burdens on the Town, which are small in comparison. The Town of Bolton has gained a windfall of over \$600,000 in equity. The Town of Bolton has not sold the property to any bona fide third party and Mr. DiPietro is not in unlawful possession of the farm. The Plaintiff will not be harmed by the relatively small delay caused by vacating the judgment and will be fully compensated regardless of the ultimate outcome, conversely Mr. DiPietro will be irreparably harmed if the Town retains Absolute Title to all five Parcels. Justice requires vacating the judgment.

II. FACTUAL BACKGROUND

Alan DiPietro is a 51-year-old alpaca and hemp farmer and resident of Bolton. Mr. DiPietro was previously a chief engineer at iRobot Corporation in Bedford, Massachusetts. After becoming disenchanted with the bureaucracy and red tape involved in his corporate career, Mr. DiPietro began farming and herding alpacas in 2008 at his former property at 4 Riverside Park, Maynard, Massachusetts 01754.

Mr. DiPietro started by purchasing two females and one male and breeding them to grow his herd. Over the next couple of years, Mr. DiPietro's success as an alpaca farmer soon led to the need for more land, as his one-acre field on Riverside Park was no longer adequate to house the growing herd.

Around March of 2014, Mr. DiPietro became separated from his wife and suffered through a financially devastating divorce that ultimately led to bankruptcy. After bankruptcy, he still had access to his 401(k) funds. Mr. DiPietro cashed out his 401(k) funds to purchase land in Bolton and bordering Stow, Massachusetts. Only that portion of Mr. DiPietro's land that falls within the tax jurisdiction of Bolton is the subject of this case.

The land Mr. DiPietro purchased was particularly appealing to him as its size and location would allow him to relocate his herd while remaining near his parents and his childhood hometown. He made plans to build a house on the Property that his parents could move into.

On June 20, 2014, Mr. DiPietro paid \$160,000 to purchase the land, which consists of five Parcels: the First Parcel (3e-33) the Second Parcel (4e-43), the Third Parcel (4e-44), the Fourth Parcel (4e-45) and the Fifth Parcel (4e-46), located on Teele Road in Bolton (Worcester County) ("the Property") and on Maple Street in Stow (Middlesex County). The land is 34 acres: 26 acres in Bolton and 8 acres in Stow. A true copy of the area plan dated August 27, 1991, depicting the Bolton and Stow Land is attached as (Exhibit A).

After purchasing the land, Mr. DiPietro erected rustic wooden fencing, gates, and other small structures such as a shed that were necessary for his herd, mowed existing fields to allow the herd to graze, and moved his alpacas to the Property. Around this time, because of his declaration of bankruptcy, the mortgagee on Mr. DiPietro's Riverside Park home accelerated foreclosure, leading to foreclosure and eviction of Mr. DiPietro from this home in 2016.

After losing his Riverside Park home in 2016, Mr. DiPietro resolved to move forward with a fresh start after divorce, bankruptcy, mortgage foreclosure, and eviction. He moved a motorhome onto the Property and has been living and farming there ever since. At this point Mr. DiPietro started the permitting process to build a retirement home on the First Parcel. The Town of Bolton informed him

that they would not honor the Variances for the First and Second Parcels they had been taxing at the higher “buildable” rate for the last 25 years. Mr. DiPietro applied for an abatement and the taxes on these two Parcels were reduced. (Exhibit B)

Mr. DiPietro's farming endeavors have struggled. Thanks in part to actions taken by Bolton and Stow, he has only been able to earn minimal income from his alpaca farm and subsists largely on SNAP benefits and vegetables he grows for food and firewood he harvests for heating his home.

Mr. DiPietro sought to begin a new life as a farmer to escape from the bureaucratic frustrations of the corporate world. But it did not take long for him to fall into yet another bureaucratic quagmire.

The Environment-Related Litigation Regarding the Property

Shortly after beginning work on his new land, Mr. DiPietro was notified in 2014 by the Stow and Bolton Conservation Commissions that his maintenance efforts—specifically, mowing existing fields, erecting natural wooden fencing, erecting gates, and erecting small sheds to house his alpacas—may have violated the Massachusetts Wetland Protection Act (“WPA”) and other state and local environmental regulations. The commissions informed Mr. DiPietro that he would need to either submit Notices of Intent to the respective commissions in order to receive Orders of Conditions for use permits to continue his property maintenance, or he would need to restore the land to its original state.

This began a protracted dispute between the towns and Mr. DiPietro as to whether the WPA and other environmental regulations applied to the work he was conducting on his Property; specifically, whether the Property was covered by the environmental regulations and, if so, whether Mr. DiPietro's agricultural use of his property was exempt from conservation rules. In the ensuing three years, the commissions issued enforcement orders and numerous tickets, and the towns filed two lawsuits against Mr. DiPietro on account of his alleged violations.

The commissions' enforcement actions and lawsuits frustrated Mr. DiPietro's ability to turn his Property to profitable use, further depressing his financial condition. As a result, Mr. DiPietro became delinquent on his property taxes for 2016. It was at this point that 14% annual interest, subsequent tax bills, and costs began accruing on Mr. DiPietro's tax debt.

In order to redeem his property from its tax debt, Mr. DiPietro sought for ways to sell the Property's First Parcel, which would require him to receive a variance from the Bolton Zoning Board of Appeals to reclassify his Parcel as buildable, as well as an Order of Conditions from the Bolton Conservation Commission, and a septic permit for eventual residential construction on the Property. By unanimous vote of the Bolton Zoning Board of Appeals on June 14, 2016, Mr. DiPietro successfully received the necessary variance for the First Parcel, the address listed on the variance's findings and decision being 110 Teele Road, Bolton, Massachusetts 01740. The findings and decision was subsequently recorded in the Worcester County Registry of Deeds on July 14, 2016. (Exhibit C)

After receiving the variance, Mr. DiPietro filed a Notice of Intent with the Bolton Conservation Commission in order to receive an Order of Conditions, a prerequisite for residential construction. However, around this time the Secretary of Energy and Environmental Affairs declared a drought watch for central Massachusetts, which forestalled Mr. DiPietro's ability to refute the presumption that waters on his Property were "perennial streams" -a presumption he would need to refute before becoming eligible for an Order of Conditions for the First Parcel.

Refuting the perennial streams presumption was important to preserving the Property's residential value for potential buyers, because the presence of a perennial stream would create a 200 foot protected "riverfront area," a considerably greater amount of protected land than applicable to "intermittent streams" which are protected by a 100-foot "buffer zone." See 310 CMR § 10.04; G.L. c. 131 § 40; Bolton Bylaws §§ 233-2A-B, E (extending protected "riverfront area" to 200 feet adjacent to

"perennial streams"). See also Bolton Bylaws § 233-2F (allowing perennial stream presumption to be rebutted by a preponderance of the evidence).

While the drought watch was still in effect and before Mr. DiPietro could receive the Order of Conditions necessary for him to prepare his Property for sale, the towns of Stow and Bolton jointly filed a lawsuit against Mr. DiPietro in the Massachusetts Superior Court on May 15, 2017, seeking injunctive and declaratory relief and damages based on allegations he violated the WPA and state and local wetlands regulations (the "Superior Court Action"). Mr. DiPietro was financially unable to hire counsel to represent him in the lawsuit.

Mr. DiPietro was served with process in the Superior Court Action on May 16, 2017, by the leaving of summons, the Order of Notice, and a copy of the complaint taped to his mailbox at 201 Maple Street, Stow, Massachusetts 01775, the address for the Stow portion of his land. On May 24, 2017, the Superior Court held a hearing on a motion for preliminary injunction filed by the towns alongside their complaint, granting the motion after Mr. DiPietro, acting pro se, inadvertently failed to appear at the hearing, erroneously believing that the hearing was to be held two days later. On May 25, 2017, Mr. DiPietro filed two motions in the Superior Court Action: 1) a motion for reconsideration asking the court for a new hearing on the towns' preliminary injunction motion; and 2) a motion to dismiss. The court denied both motions on May 31, 2017, for failure to comply with Superior Court Rule 9A.

Mr. DiPietro learned through communications with the local Bolton and Stow postmasters that around the time of the commencement of the Superior Court Action, Bolton's and Stow's town clerks requested that the towns' respective postmasters stop delivering mail to Mr. DiPietro at the Property and at his Maple Street address because they were supposedly not addresses officially registered with the towns. Bolton and Stow took this action even though they had used the Maple Street address to

serve process on Mr. DiPietro, even though nearly a year earlier the findings and decision of the First Parcel's variance had been recorded in the Worcester County Registry of Deeds, and even though approximately three months earlier Mr. DiPietro had executed and recorded in the Worcester County Registry of Deeds a Declaration of Homestead for Homes Owned by Natural Persons for the portion of the Property at 110 Teele Road, Bolton, Massachusetts 01740. (Exhibit D) The Town, however, had no issues using this address as Certification of Service in the Eviction Case. (Exhibit E)

Neither town nor the local postmasters informed Mr. DiPietro that his mail service would be or had been terminated. Mr. DiPietro ultimately learned, after the conclusion of the Superior Court Action, from mails received through a FOIA request, that the supposed reason Bolton refused to recognize his address was because in Bolton's view, there were no legal home, structures, or business on the Property. Mr. DiPietro could not meet this home/structure/business requirement without authorization from the Conservation Commission and building department to construct on the Property, and he was unable to receive authorization, at first, because of the drought watch and later because of his back taxes.

Because his mail was being marked "RETURN TO SENDER, NO SUCH NUMBER, UNABLE TO FORWARD" he was no longer receiving mail from the court, and Mr. DiPietro was unaware that his motions had been denied, (Exhibit F & G) He was therefore also unaware that on May 31, 2017, the time for him to answer the complaint had begun to toll. Without legal counsel and without notice of litigation developments, Bolton's actions precluded Mr. DiPietro from being able to argue in court that his land was unprotected, or that his activities were exempt from wetlands regulations as agricultural use, Bolton Bylaws § 233-3C, or having occurred in "areas regarded as 'previously developed' or 'degraded.'" Id. § 233-2E. For nearly four months after filing his motions, Mr. DiPietro filed no other documents and made no other appearances with the court, leading to the court's issuance of an order of default against him on September 29, 2017, for failure to respond to the complaint.

On September 8, 2017, while the Superior Court case was ongoing and only three weeks before the court's order of default against Mr. DiPietro, Bolton issued tax taking titles for four of the Property's Parcels for the amount of \$5,870.47, interest, fees, and costs included. On July 13, 2018, Bolton issued another tax taking title for the remaining Parcel on the Property, for the amount of \$246.33, interest, fees, and costs included. In total-interest, fees, and costs included-these tax liens on the Property totaled \$6,116.80. Once each tax taking title was issued, 16% annual interest, plus costs, began accruing on Mr. DiPietro's tax debt.

On December 18, 2017, the Superior Court entered a default judgment against Mr. DiPietro, ordering him to pay damages to Bolton and Stow with 12% interest accruing from the date of May 15, 2017, to restore the Property to its prior state, and to submit within 90 days a Notice of Intent to the towns' respective conservation commissions to seek approval for his proposed alterations to the Property. On May 3, 2018, the Superior Court issued an execution of judgment against Mr. DiPietro for the amount of \$27,744.92 for unpaid tickets issued by Stow for the alleged environmental violations, interest and costs included. On May 30, 2018, the Superior Court entered a judgment for Bolton's attorney's fees and costs against Mr. DiPietro, and on July 23, 2018, the court issued an execution of judgment for the amount of \$12,154.51, interest included.

Bolton's Efforts to Frustrate Mr. DiPietro's Attempts to Pay Taxes

With insufficient funds to secure counsel for an appeal, Mr. DiPietro looked for ways to pay the judgment. Mr. DiPietro hoped that he could quickly sell part or all of the Property in order to secure the funds needed to satisfy the back taxes and judgment in the Superior Court Action. Unfortunately for him, Bolton would not allow the issue to be resolved so easily and allow him to redeem.

At the time of the default judgment against him, Mr. DiPietro was still unable to sell any portion of his Property, as he had not yet been granted an Order of Conditions from the Bolton Conservation

Commission due to the ongoing drought watch that prevented him from rebutting the perennial stream presumption. After the drought watch was finally lifted, Mr. DiPietro filed a request with the Bolton Conservation Commission on December 26, 2017, for a Determination of Applicability regarding whether the waters on his Property were "perennial streams." Mr. DiPietro was finally vindicated on January 16, 2018, when the Bolton Conservation Commission voted unanimously to recognize that the streams on the Property were intermittent, not perennial.

Mr. DiPietro subsequently filed a Notice of Intent with the Bolton Conservation Commission on February 28, 2018, in compliance with the Superior Court's order, and was granted an Order of Conditions from the Conservation Commission on March 6, 2018, authorizing residential construction on the Property. However, the Conservation Commission withheld the issuance of the concomitant Local Wetlands Bylaw Permit to Mr. DiPietro on the ground that he was delinquent on his property taxes, even though the commission was under no legal obligation to do so. See Bolton Bylaws § 215-2 ("The licensing authority may deny ... any license or permit ... of any party whose name appears on said list [of delinquent taxpayers] furnished to the licensing authority from the tax collector") (emphasis added).

Indeed, the Commission was required to give "[d]ue consideration ... to any demonstrated hardship on the applicant by reason of denial" of a permit. Bolton Bylaws § 233-6(B). Denying the permit to Mr. DiPietro due to his tax delinquency caused him grave hardship, as the permit was necessary for him to be able to prepare the Property for sale in order to raise the funds needed to redeem his back taxes and satisfy the Superior Court's judgment against him. However, the Commission did not take into account the hardship to Mr. DiPietro that denying the permit would cause, even though it knew that Mr. DiPietro needed the permit in order to sell the First Parcel and that

he was in dire financial straits, in part because he had requested a waiver of the filing fee for the Notice of Intent.

Moreover, the same Bolton Bylaw which grants the Commission the discretion to deny permits for tax delinquency requires that the permit applicant be afforded a hearing on whether the permit should be withheld, to be held not earlier than 14 days after notice is given to the permit applicant. Bolton Bylaws § 215-2. Although the tax delinquency issue was discussed at the March 6, 2018, hearing where the Conservation Commission issued the Order of Conditions authorizing residential construction on the Property, Mr. DiPietro was not given notice before the hearing that the Commission was considering withholding the permit because of the tax debts, he was not given notice that he had a right to argue and present evidence as to why withholding the permit would cause him undue hardship, and he was not given the opportunity at this hearing to argue why the permit should not be withheld due to the back taxes. He was also not subsequently afforded an independent hearing regarding whether tax delinquency would be grounds for denying the requested permit.

Furthermore, Bolton Bylaws § 215-3 states that "[a]ny party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the licenses or permit, and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement" (emphasis added). Instead of offering a payment agreement that Mr. DiPietro could afford, such as requiring him to immediately redeem his back taxes with proceeds from sale of the Property, Bolton's treasurer and tax collector offered an agreement that would have required Mr. DiPietro to make a substantial down payment that he could not afford.

Even in the face of Bolton's systematic prevention of Mr. DiPietro's ability to use and sell his Property, he still attempted to work with the Town in order to come into compliance, sell his Property, and to redeem his back taxes. Mr. DiPietro reached out to the Bolton treasurer and other town

employees requesting information and asking what he could do to rectify the tax delinquency situation. He was contacted by Bolton's counsel, Mr. Gibbons, who instructed Mr. DiPietro to direct legal inquiries to his own counsel and send any other questions for the Town to Mr. Gibbons. Relying on this information, Mr. DiPietro sent emails to Mr. Gibbons to which Mr. Gibbons was largely unresponsive, bringing payment agreement negotiations to a halt. (Exhibit H & I)

Since 2016, Mr. DiPietro has been attempting to sell parts of the Property in order to raise funds to redeem his farm, and he has even found a number of potential buyers over the years. He has obtained purchase offers for Parcels of the property including offers up to \$229,000 for the First Parcel (Exhibits J, K & L) and an offer of \$510,000 for the remaining four Parcels (Exhibit M). Unfortunately, each offer was conditioned on receiving the already approved and necessary permits for the First Parcel etc. from Bolton that the Town refused to issue on account of Mr. DiPietro's property tax debt. Bolton has even chilled any potential sale by directly warning potential buyers that no sales would be possible or allowed, even though such a sale would allow Bolton to quickly recoup what it was owed.

The Town has on multiple occasions since 2018 blocked his attempts to profitably use his Property in other ways. For example, in October 2018, Mr. DiPietro filed an application with Bolton for a dog license so he could keep a guard dog to protect his farm from thieves. Bolton refused to issue the license supposedly because the Bolton Bylaws require dog licenses to contain a legally registered address and Bolton would not recognize the Property's address. Mr. DiPietro subsequently received a dog license from the Town of Stow without incident.

In early October 2019, Mr. DiPietro conceived a new plan to raise money to pay his back taxes. He applied to the Massachusetts Department of Conservation and Recreation seeking approval of a forest cutting plan, in the hopes of logging his Property to raise funds to redeem his back taxes. The

Department denied Mr. DiPietro's application, at the behest of the towns' conservation officials, on account of the environmental violations judgment.

In 2020, in a last ditch effort to save his property, Mr. DiPietro secured industrial hemp licenses from the Department of Agricultural Resources (MDAR) for the Property located in Bolton, as well as the portion of Mr. DiPietro's property located in Stow, respectively.

Starting in August of 2020, and again in September of 2021, the Town Administrator and other town employees were in communication with MDAR officials to inquire whether Mr. DiPietro's tax delinquency, alleged invalid address, or alleged wetlands violations would serve as bases to revoke his license. After Bolton secured foreclosure of the Property three months later, the Town's Conservation Agent contacted MDAR officials on December 21, 2021, instructing them to not renew the hemp license because the Town then “effectively” owned the Property and did not plan to continue use of the license.

Even before revoking the hemp license for the Bolton portion of Mr. DiPietro's property, Bolton's Conservation Agent attempted to have the hemp license for the Stow portion of Mr. DiPietro's property revoked. On September 27, 2021, she forwarded emails between Stow's Conservation Director and Town Clerk to MDAR officials which claimed that the address for the Stow portion of the property, 201 Maple Street, was not a legal address, and thus that the hemp license applications bearing this address were void.

Foreclosure and Eviction Proceedings

Instead of working with Mr. DiPietro to prepare the Property for sale so he could quickly redeem his Property, Bolton filed a lawsuit against him in the Land Court on September 12, 2019, to foreclose his right of redemption on his Property. After Mr. DiPietro filed his answer in the Land Court

case on February 14, 2020, and before any hearing was held in the case, the Land Court postponed its Entry of Finding and Payment of Legal Fees until June 4, 2020. Starting in August of 2020, and again in September of 2021, the Town Administrator and other town employees were in communication with MDAR officials to inquire whether Mr. DiPietro's tax delinquency, invalid address, or alleged wetlands violations would serve as bases to revoke his license.

In its Entry of Finding and Payment of Legal Fees, the Land Court found that Mr. DiPietro could redeem upon payment to Bolton, on or before October 1, 2020, of the sum of \$41,532.79 with interest allowed by statute, court costs in the amount of \$1,012.80, and legal fees of \$2,110, for a total of \$44,655.59. The Land Court denied Mr. DiPietro's request for an order requiring Bolton to grant him the Order of Conditions that he needed in order to sell the First Parcel or other portion of the Property to raise the funds to redeem his Property.

Mr. DiPietro was unable to sell any portion of the Property or otherwise raise the necessary funds and could not redeem the Property by the Land Court's October 1, 2020, deadline. On October 5, 2020, Bolton filed a motion for judgment in the Land Court. On June 3, 2021, the Land Court allowed the motion and held it in abeyance until September 2, 2021, giving Mr. DiPietro one final three-month period to redeem.

While the land court matter was pending, Mr. DiPietro sought Agricultural Mediation by the Massachusetts Office of Public Collaboration between Mr. DiPietro and Bolton regarding the tax and wetland issues. Bolton's attorneys refused mediation. Without the ability to sell or profitably utilize his Property, Mr. DiPietro was unable to redeem. The Land Court granted Bolton's motion for judgment on September 2, 2021.

On September 30, 2021, Bolton filed a motion for general default against Mr. DiPietro, which the Land Court granted on December 6, 2021, resulting in Bolton's ability to keep all of Mr. DiPietro's

equity in the Property. On December 14, 2021, the Land Court foreclosed Mr. DiPietro's right of redemption, unconstitutionally, transferring absolute title to the Property to Bolton.

Bolton continued to frustrate Mr. DiPietro's ability to earn income from the use of his Property. For numerous years, Mr. DiPietro had been issued agricultural burn permits by the Town. Once the Town took absolute title, it had Mr. DiPietro's 2022 burn permit revoked.

After foreclosure, Bolton filed a summary process lawsuit against Mr. DiPietro in the Clinton District Court in order to evict Mr. DiPietro from the Property.

On January 10, 2023 Mr. DiPietro filed a complaint against the Town in the United States District Court for the District of Massachusetts (Case No. 4:23-CV-40004-ADB). The complaint alleges that the Town's tax taking of Mr. DiPietro's real estate in Bolton violates the U.S. Constitution's Fifth Amendment Takings Clause and the Eighth Amendment Excessive Fines Clause.

On February 16, 2023 the Clinton District Court (Docket No. 2268SU000004) issued a decision against counter claims and granting summary judgment for possession of real estate previously foreclosed in the Land Court (Docket No. 19 TL 001139) for unpaid real estate taxes. On March 20, 2023 Mr. DiPietro filled notice of appeal to the Appellate Division. (Docket No. 23-ADSP-68WE)

On May 25, 2023 The U.S. Supreme Court issued its decision in *Tyler v. Hennepin County*, 143 S.Ct. 1369 (2023). The unanimous opinion squarely addresses the legal issue in Federal case no. 4:23-CV-40004-ADB and underpinning the instant case, holding that the government may not foreclose and take the entire value of property worth more than its encumbering tax debt. The Court rejected the notion that state law could be used to sidestep the 5th Amendment's requirement that just compensation be paid when the government completes a taking. Under these holdings, it is clear that the

Massachusetts tax foreclosure system is unconstitutional on its face and that Mr. DiPietro is entitled to any surplus related to this Land Court action (Docket No. 19 TL 001139).

On July 19, 2023, the Appellate Division sent to the parties a notice of receipt of the appeal and briefing schedule. On August 18, 2023 the Appellate Division ORDERED: “The appeal is stayed for 90 days. On or before November 16, 2023, the defendant shall file in the Appellate Division, and serve on the plaintiff, a status report.” On November 3, 2023 once again Mr. DiPietro moved that the Appellate Division stay the above-captioned matter until 30 days after the resolution of Case No. 4:23-CV-40004-ADB in the United States District Court for the District of Massachusetts. On November 16, 2023 the Appellate Division again ORDERED: “The appeal is stayed for 90 days. “

In the wake of a divorce, bankruptcy, foreclosure of and eviction from his Riverside Park home, Mr. DiPietro hoped that the investment of his retirement savings would allow him to start a new life as an alpaca farmer caring for his parents in their old age. But at every turn, Bolton has prevented Mr. DiPietro from profitably utilizing the Property and, rather than granting the permits that would have allowed him to sell his Property so he could meet his legal and tax obligations to Bolton without losing the life savings invested in the Property's equity value, Bolton has resorted to hardnosed litigation and underhanded tactics that Mr. DiPietro was financially and otherwise unable to effectively combat.

As he has lost title to his Property and faces eviction from his home, Mr. DiPietro has been left with no other options than to seek to Vacate this Judgment and seek compensation for his equity in Federal court, with which he can attempt to restart his life again.

**G.L. c. 60 Disincentivizes Municipalities to Cooperate with Taxpayers,
So That They Can Pay Taxes**

Bolton put the financially-strapped Mr. DiPietro in a "catch-22" dilemma. He could not earn enough money to pay his taxes and satisfy the Superior Court's judgment against him by farming, conducting a timber cut, or selling one of his Parcels because Bolton was blocking his permits on the grounds that he had not paid the very debts he was attempting to pay. Further, Bolton would not offer a payment agreement to Mr. DiPietro that he could afford, virtually ensuring that he would lose his Property.

The Massachusetts tax foreclosure statute, G.L. c. 60, authorizes taxlienholders to foreclose and take absolute title to tax-indebted properties, even when the Property is worth more than the tax debt. Thus municipalities have a powerful financial incentive to foreclose and then keep or sell valuable properties, like the Property in this case, rather than help owners avoid foreclosure by generating income from their property or negotiating a reasonable payment plan.

III. LEGAL STANDARD

“Generally tax redemption statutes, being remedial in their nature, are interpreted liberally in favor of a person seeking to recover his land.” *Union Trust Co. v. Reed*, 213 Mass. 199, 201 (1912). “In keeping with the respect with which our society regards the private ownership of property, the long standing policy in this Commonwealth favors allowing an owner to redeem property taken for the nonpayment of taxes.” *Town of Lynnfield v. Owners Unknown*, 397 Mass. 470, 473–474 (1986). Moreover, “[t]he purpose of those provisions is not to provide municipalities with a method of acquiring property for municipal purposes without paying the owner of the property fair compensation as in eminent domain proceedings. The redemption provisions were enacted by the Legislature to provide municipalities with a mechanism for the prompt collection of delinquent real estate taxes.” *Id.*

at 474; *City of Boston v. James*, 26 Mass.App.Ct. at 630 “the only legitimate interest of a town in seeking to foreclose rights of redemption is the collection of taxes due on the property, together with other costs and interest”.

Accordingly, the tax foreclosure scheme grants the Court discretion to vacate a judgment *for* property tax foreclosure. General Laws c. 60, § 69A, and related case law, govern petitions to vacate judgments of foreclosure. "Such petitions 'are extraordinary in nature and ought to be granted only after careful consideration and in instances where they are required to accomplish justice.' " *Lynch v. Boston*, 313 Mass. 478, 480 (1943), quoting from *Russell v. Foley*, 278 Mass. 145, 148 (1932). Allowance of a petition rests "largely but not entirely in the discretion of the trial judge." *Lynch v. Boston*, *supra*, quoting from *Bucher v. Randolph*, 307 Mass. 391, 393 (1940). And an interested party must file such a petition within one year of the entry of the judgment sought to be vacated, unless that party alleges a violation of its rights to substantive or procedural due process. See *Worcester v. AME Realty Corp.*, 62 Mass. App. Ct. 1110 (2004); *Andover v. State Financial Servs., Inc.*, 432 Mass. 571, 574-576 (2000); *North Reading v. Welch*, 46 Mass. App. Ct. 818, 819-820 (1999).

Denial of Substantive and Procedural Due Process

Due Process is the principle that the Fifth and Fourteenth Amendments of the U. S. Constitution protect fundamental rights from government interference. Both Amendments guarantee due process when someone is denied "life, liberty, or property." (the “Due Process Clause”) These laws are said to be “fundamental” because they were found to be so important for individual liberty that they should be beyond the reach of the political process, and therefore, they are enshrined in the Constitution. The theory holds that substantive as well as procedural rights are protected, reasoning that they cannot be infringed upon by the government without justification—regardless of the process by which they are infringed upon.

The Fifth Amendment to the U. S. Constitution speaks to the Federal government and the Fourteenth Amendment to the States; “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” (the “Takings Clause”) Were the Fourteenth Amendment unclear in any way the Massachusetts Constitution Declaration of Rights Article 10 elaborates and enshrines that: “Each individual of the society has a right to be protected by it in the enjoyment of his ... property, according to standing laws And whenever the public exigencies require that the property of any individual should be appropriated to public uses, **he shall receive a reasonable compensation therefor.**” (emphasis added)

”The Fourteenth Amendment to the United States Constitution and arts. 1, 10, and 12 of the Massachusetts Declaration of Rights guarantee individuals due process of law.” *Kligler v. Attorney Gen.*, 491 Mass. 38, 55 (2022). The due process guarantee includes both procedural and substantive protections. *See Vasquez v. Commonwealth*, 481 Mass. 747, 757 (2019). Procedural due process mandates that “government action depriving a person of life, liberty, or property... must [] be implemented in a fair manner.” *Querubin v. Com.*, 440 Mass. 108, 116 (2003), quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Substantive due process protects individuals against “certain government actions regardless of the fairness of the procedures used to implement them.” *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Substantive due process thus prohibits governmental actions that unduly interfere with rights that are deemed fundamental. *See Commonwealth v. Simmons*, 448 Mass. 687, 695 (2007). As the Supreme Court has stated: “[t]he first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty' . . . [o]nly after finding the deprivation of a protected interest do we look to see if the [government's] procedures comport with due process.” *Amer. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999). The Massachusetts tax title foreclosure process violates both substantive and procedural due process.

According to Article 10, the power to take private property for public use is inseparable from the duty to compensate for its taking. *Bromfield v. Treasurer and Receiver Gen.*, 390 Mass. 668 (1983) (affirming this principle in the eminent domain context). “[A] statute which attempts to authorize the appropriation of private property for public uses, without making adequate provision for compensation, is unconstitutional and void.” *Brickett v. Haverhill Aqueduct Co.*, 142 Mass. 394, 396 (1886) (citing *Connecticut River R. Co. v. Cnty. Comm’rs*, 127 Mass. 50 (1879)).

Further, the Massachusetts Declaration of Rights protects private property and provides an independent basis for determining that the state tax foreclosure system is unconstitutional. *Bromfield v. Treasurer & Receiver Gen.*, 390 Mass. 665, 668 (1983); *Cone v. Forest*, 126 Mass. 97 (1879) (holding that tax collector was required to return the surplus value of cows that were seized and sold to cover delinquent taxes). The government is only entitled to collect as much as it is owed; it has no lawful entitlement to anything more. *See Boston v. James*, 26 Mass. App. Ct. 625 (1988) (“The only legitimate interest of a town in seeking to foreclose rights of redemption is the collection of taxes due ... together with ... costs and interest”). When the government “chooses to exercise its powers of eminent domain, it incurs a corollary and inseparable obligation to make payment for the land seized.” *Bromfield*, 390 Mass. at 668-69 (“It has long been established that no citizen ought to be compelled to trust to the future justice of the Legislature to provide the compensation owing him.”). Because the foreclosure statute does not provide for reasonable compensation, it is unconstitutional under the Massachusetts Declaration of Rights.

As in *Town of Sharon v. Kafka*, 18 Mass. App. Ct. 541, 542 (1984) There may be ... circumstances which justify vacating the decrees if they ... come within the rule of ... decisions involving the denial of due process of law in analogous circumstances. If there was a denial of due process, the stricture of Section 69A would not apply. *See Chapin v. Aylward*, 204 Kan. 448, 455

(1970), holding that a provision somewhat similar to G.L. c. 60, Section 69A, "must give way ... where the facts clearly establish a denial of due process of law."

IV. ARGUMENT

Mr. DiPietro Alleges a Violation of his Rights to Substantive and Procedural Due Process.

Here, the Town filed a complaint pursuant to G.L. c. 60, §§ 53–69A, which, upon judgment, allowed it to obtain absolute title to Mr. DiPietro’s property. But this taking is impermissible because Chapter 60 does not provide any opportunity for taxpayers to be compensated for their equity. *Kelly v. City of Boston*, 348 Mass. 385, 388–89 (1965) (holding that, under the statute, surplus from a post-foreclosure sale “belongs to the municipality” and that the taxpayer “is entitled to none of ... the surplus”). This runs afoul of *Tyler*, because it authorizes the government to take more property than is due. A statute permitting a taking without compensation violates the constitution and is therefore void and unenforceable. *See Chicago, Indianapolis & Louisville Ry. v. Hackett*, 228 U.S. 559 (1912) (“That act was therefore as inoperative as if it had never been passed, for an unconstitutional act is not a law”); *Bromfield*, 390 Mass. at 665.

A statute authorizing a taking must provide for just compensation. And just compensation must restore the owner to “as good position pecuniarily as he would have occupied if his property had not been taken.” *United States v. Miller*, 317 U.S. 369, 373 (1943). Thus, the statute must authorize the payment of money—not simply additional steps that would help a person avoid a taking. *See id.*; *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) (“Under this standard, the owner is entitled to receive ‘what a willing buyer would pay in case to a willing seller’ at the time of the taking.”).

Giving an owner a redemption period in which he may recover his title by paying what he owes may be helpful for those who have sufficient resources to take advantage of it, but it is not just compensation. *See Miller*, 317 U.S. at 373. Conditions imposed on redemption making it easier for a tax delinquent property owner to recover title do not satisfy the government’s obligations because alternative procedural remedies do not substitute for just compensation. *Knick*, 139 S. Ct. at 2172 (“[N]o matter what sort of procedures the government puts in place to remedy a taking, a property owner has a Fifth Amendment entitlement to compensation as soon as the government takes his property without paying for it.”); *see also Haverhill Bridge Proprietors v. Essex Cnty. Comm’rs*, 103 Mass. 120, 124–25 (1869) (rejecting effort to make procedural opportunities a stand-in for reasonable compensation). A procedural remedy granting the “possibility of compensation in a later proceeding” is not sufficient. *See id.*; *Dimino v. Secretary of Com.*, 427 Mass. 704, 711 (1998). Thus, the provisions of Chapter 60 that allow the transfer of absolute title to the foreclosing entity are unconstitutional and unenforceable by this Court.

Even if a public exigency or legitimate interest exists, all levels of Government must treat an individual in the same manner as others in similar conditions and circumstances. “The Takings Clause was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong*, 364 U. S., at 49. “A taxpayer who loses” his \$700,000 farm “to the State to fulfill a” \$60,000 “tax debt has made a far greater contribution to the public fisc than [he] owed. The taxpayer must render unto Caesar what is Caesar’s, but no more.” *Tyler v. Hennepin County*, 598 U.S. 631 (2023) (“Tyler”).

The Due Process Clause also promises that before depriving a citizen of life, liberty or property, the government must follow fair procedures. Thus, it is not enough just to act in accordance with whatever law there may happen to be. Citizens are entitled to have the government observe or offer fair

procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is “due” is unconstitutional. Massachusetts has not provided a process to receive reasonable compensation, nor has the Town of Bolton returned the surplus to Mr. DiPietro.

Just Compensation has not been Provided

The Supreme Judicial Court has repeatedly instructed that the compensation requirement be enforced with “fairness and justice” in mind. *See Giovanella v. Conservation Comm’n of Ashland*, 447 Mass. 720 (2006) Just compensation protection “was designed to bar Government from forcing some people alone to bear public burdens” (*quoting Armstrong v. United States*, 364 U.S. 40, 49 (1960)). This instruction is particularly important here, where the Massachusetts tax foreclosure statute purports to authorize a transfer of an owner’s entire home equity to the government regardless of how much is owed—a windfall that often vastly exceeds the owner’s debt. *See Clifford, Massachusetts Has a Problem*, 13 U. Mass. L. Rev. at 284.

Quoting from the Amicus Brief of the Real Estate Bar in *Tyngsboro v. Recco* 18 TL 001223 (“Recco”) “*Tyler* holds that tax debt collection in excess of principal taxes, interest, fees, and costs amounts to an unconstitutional, uncompensated taking. The concurring opinion in *Tyler*, likewise, provides a doctrinal basis to conclude that such exactions violate the Excessive Fines Clause of the Eighth Amendment. Both constitutional infractions call for economic remedies—just compensation for the equity of redemption, and disgorgement of the excessive fine—not the invalidation of the unconstitutional law and action taken thereunder. However, the same legal history that supported the *Tyler* Court’s recognition of an uncompensated taking of an age-old property right, the equity of redemption, suggests that strict foreclosure regimes, such as G.L. c. 60, also offend Due Process. Laws and governmental actions that violate Due Process are invalid.”

The Supreme Court held in *Lawton*, 110 U.S. at 150, that "[t]o withhold the surplus from the owner **would be to violate the Fifth Amendment to the Constitution and to deprive him of his property without due process of law**, or to take his property for public use without just compensation. If he affirms the propriety of selling or taking more than enough of his land to pay the tax and penalty and interest and costs, and applies for the surplus money, **he must receive at least that.**" (Emphases added.)

The Massachusetts Tax Foreclosure Scheme

The constitutional defect found in *Tyler* is not the only constitutional problem with a tax deed as Massachusetts does not require a pre-seizure hearing before a neutral magistrate. Due process requires a hearing before a neutral magistrate to justify the removal of a property right. *Fuentes v. Shevin*, 407 U.S. 67 (1972) (striking down a pre-trial replevy for a lack of a pre-seizure hearing).

As the Supreme Court has held, "deprivation[s] of ... property [must be] be preceded by notice and opportunity for hearing...." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950) . See *Bridgeman v. Dist. Att'y for Suffolk*, 471 Mass. 465, 479 (2015). This requirement is directly violated under the tax deed procedures followed in the Commonwealth. G.L. c. 60, § 53 does not require a hearing. No neutral magistrate determines the validity of the nonpayment claim; instead, the town's tax collector simply seizes the land. G.L. c. 60, § 53. By analogy, the process provided by § 53 is equivalent to allowing the prosecuting attorney to declare the accused guilty without requiring proof of the case in court. See *Massachusetts Has a Problem-The Unconstitutionality of the Tax Deed*, 13 U. Mass. L. Rev. 294-304 (2018)

The Supreme Judicial Court has noted that tax deeds take much more than a security interest. "The statute speaks of tax title as 'security for the repayment of [overdue] taxes,' G.L. c. 60, § 54, but in practice, taking tax title effectively transfers control of the property from the delinquent taxpayer to the

city or town." *Tallage Lincoln, LLC v. Williams*, 485 Mass. 449, 463 (2020). Of course, even if the tax deed were only a security device, the requirements of providing a due process hearing before deprivation still exist. See *Connecticut v. Doehr*, 501 U.S. 1 (1991) (requiring notice and a hearing before a non-possessory attachment to secure payment of a judgment can be claimed).

There are in the instant case circumstances involving the denial of Due Process of Law, both Substantive and Procedural which justify vacating the decree.

The Office of the Attorney General ("OAG") provided the following guidance after the recent decision of the Supreme Court of the United States in *Tyler v. Hennepin County*, 598 U.S. 631 (2023) ("Tyler"). "In May of this year, 2023, the Supreme Court decided that Minnesota's tax lien foreclosure law violated the Takings Clause of the Fifth Amendment to the U.S. Constitution. The Supreme Court found that the municipality "could not use the toehold of the tax debt to confiscate more property than was due," and that "[b]y doing so, it effected a classic taking in which the government directly appropriates private property for its own use." For these reasons, the Supreme Court found the Minnesota law to be unconstitutional, and decided that the homeowner deserved "just compensation" for the lost value of her home. The OAG's position is that the tax lien foreclosure process created by the Massachusetts' Tax Lien Foreclosure Law is unconstitutional in light of the Supreme Court's decision in Tyler. "

A property owner has a Fifth Amendment claim for a violation of the Takings Clause as soon as the government takes his property without paying for it, *Knick v. Scott*, 588 U.S. (2019) Slip. Op. Footnote 6. In holding that a property owner acquires an irrevocable right to just compensation immediately upon a taking, *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987), adopted a position Justice Brennan had taken in an earlier dissent. See *id.*, at 315, 318 (quoting and citing *San Diego Gas & Elec. Co. v. San Diego*, 450 U. S. 621, 654 657 (1981) Brennan,

J., dissenting)). In that opinion, Justice Brennan explained that “once there is a ‘taking,’ compensation must be awarded” because “[a]s soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has already suffered a constitutional violation.” *Id.*, at 654

The Fifth Amendment does not merely provide a damages remedy to a property owner willing to “shoulder the burden of securing compensation” after the government takes property without paying for it. *Arrigoni Enterprises, LLC v. Durham*, 578 U. S. ___, ___ (2016) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 2). Instead, it makes just compensation a “prerequisite” to the government’s authority to “tak[e] property for public use.” *Ibid.* A “purported exercise of the eminent-domain power” is therefore “invalid” unless the government “pays just compensation before or at the time of its taking.” *Id.*, at ___ (slip op., at 3). If this requirement makes some regulatory programs “unworkable in practice,” Supp. Brief 5, “so be it—our role is to enforce the Takings Clause as written.”

Towns in the Commonwealth have long relied on *Kelly v Boston*, 348 Mass. 385, 388 (1965) for the proposition that municipalities are entitled to obtain the Surplus from the sale of property taken for back taxes. However the State law statutory principles and authorities cited in *Kelly* do not overrule the Fifth Amendment. The case of *Kelly v Boston*, 348 Mass. 385 (1965) speaks to none of the legal issues at play here and thus could not, in any way, thwart the effect of Takings Clause jurisprudence authored by the United States Supreme Court due to Supremacy Clause grounds alone. See *Knick v. Scott*, 588 U.S. (2019) Slip. Op. @p. 1-23; *Baker v. Carr*, 369 U.S. 186, 211 (1962); *Cooper v. Aaron*, 358 U.S. 1, 18-20 (1958); *Marbury v. Madison*, 1 Cranch 137, 177, 2 L. Ed. 60, 73 (1803); *McCulloch v. Maryland*, 4 Wheat 316 (1819); *United States v. Nixon*, 418 U.S. 683 (1974); U.S. Const. art. VI (Supremacy Clause). Accordingly On May 25, 2023 The U.S. Supreme Court issued its opinion in *Tyler*, holding

that “Though state law is an important source of property rights, it cannot be the only one because otherwise a State could “sidestep the Takings Clause by disavowing traditional property interests” in assets it wishes to appropriate. *Phillips v. Washington Legal Foundation*, 524 U. S. at 167.”

G.L. c. 60, §64 is unconstitutional on its face and as applied to the instant case since it permits the Town to "take defendant's property without paying for it..." in violation of the Takings Clause of the Fifth Amendment to the United States Constitution. *Tyler v. Hennepin County*, 143 S.Ct. 1369 (2023) The "property", unconstitutionally taken without just or any compensation as required under the Takings Clause, would be the Surplus. *Knick v. Scott*, 588 U.S. (2019) Slip. Op. @p. 2 “Surplus” in the context of G.L. c. 60, §28 simply means the monetary interest in the Property to which the Defendant is entitled after paying the Tax Debt to the Town.

The U.S. Court's precedents have long recognized the principle that a taxpayer is entitled to the surplus in excess of the debt owed. See *United States v. Taylor*, 104 U. S. 216; *United States v. Lawton*, 110 U. S. 146. *Nelson v. City of New York*, 352 U. S. 103, did not change that. The ordinance challenged there did not “absolutely preclud[e] an owner from obtaining the surplus proceeds of a judicial sale,” but instead simply defined the process through which the owner could claim the surplus. *Id.*, at 110. Minnesota's and Massachusetts' schemes, in comparison, provide no process, no opportunity for the taxpayer to recover the excess value.

Quoting from *Tyler*: “The principle that a government may not take from a taxpayer more than she owes is rooted in English law and can trace its origins at least as far back as the Magna Carta. From the founding, the new Government of the United States could seize and sell only “so much of [a] tract of land ... as may be necessary to satisfy the taxes due thereon.” Act of July 14, 1798, §13, 1 Stat. 601. “if a whole tract of land was sold when a small part of it would have been sufficient for the taxes,

which at present appears to be the case, the collector unquestionably exceeded his authority.” *Stead’s Executors v. Course*, 4 Cranch 403, 414 (1808) (Marshall, C. J., for the Court).”

The governmental interest at stake is obtaining the funds that it is owed, inclusive of interest and costs, is not in dispute. See *Tallage Lincoln LLC v. Williams*, 485 Mass. 449, 456 (2020) (one purpose of c. 60 is "to ensure that the municipality receives the taxes it is owed"). However, G.L. c. 60 is not "narrowly tailored" to further the governmental interest in recouping what it is legitimately owed. The statute instead permits the government to take far more than it is owed, when the Crown was first prohibited from doing so in 1215. This broad, and seemingly baseless and unnecessary, appropriation of all value in the property conflicts with the basic requirements of substantive due process and is, therefore, unconstitutional.

Moreover, the U.S. Court extended a taxpayer’s right to the surplus even further in *United States v. Lawton*, 110 U. S. 146 (1884). when The Federal Government seized the taxpayer’s property and, instead of selling it to a private buyer, kept the property for itself the court held that the taxpayer was still entitled to the surplus under the statute, just as if the Government had sold the property. *Lawton*, 110 U. S., at 149–150.

The Massachusetts Tax Foreclosure Scheme is Unconstitutional, What Now?

The Massachusetts legislature has not addressed the unconstitutional nature of the tax foreclosure system, which the Massachusetts Supreme Judicial Court has described as "archaic and arcane." *Tallage Lincoln, LLC v. Williams*, 485 Mass. at 450 (2020) (noting that our sister states have found a municipality's retention of equity following a tax foreclosure sale unconstitutional and that the Supreme Judicial Court has not yet addressed a similar challenge to G.L. c. 60). However a court’s obligation to uphold constitutional rulings by the Supreme Court is not subject to or conditioned upon any antecedent action by the Massachusetts Legislature or any other legislative body. When an action,

premised upon an unconstitutional statute is asserted it is void ab initio and may even be attacked collaterally after judgment enters.

G.L. c. 60, §64 is unconstitutional on its face and as applied to Mr. DiPietro. Thus, this entire action is, at present, a legal nullity. It is respectfully submitted that the orders and judgments entered in this case are void ab initio since this action is wholly predicated upon a constitutionally infirm statute (G.L. c. 60, §64). It must be recalled that "[i]f the court which renders judgment has no jurisdiction to render it, either because the proceedings, or the law under which they are taken, are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally..." *In Re Neilson*, 131 U.S. 176, 182 (1889).

The constitutionally infirm statute (G.L. c. 60, §64) dictates that this Court possesses neither subject matter jurisdiction nor jurisdiction over the person since both of them are currently fueled by this constitutionally infirm statute. See Mass. R. Civ. P. 12(b)(1); 12(b)(2); *In Re Neilson*, 131 U.S., at 182. The relief granted to the Town of Bolton via previous judgment, which is adverse to Mr. DiPietro, is quite literally the "fruit of the poisonous tree" to which the Town has no constitutional entitlement. *Wong Sun v. United States* 371 U.S. 471, 488 (1963). It is also respectfully submitted that all subsequent orders, including the February 16, 2023 "Eviction" decision of the Clinton District Court (Docket No. 2268SU000004) are likewise "fruit" plucked from a poisonous tree.

Massachusetts Lacks a Process to Claim the Surplus in Property Tax Takings

The Town of Bolton has "effected a classic taking in which the government directly appropriates private property for its own use." As this Court mentioned in its August 2023 Statement on *Tyler v. Hennepin County, Minnesota*, "other state laws, procedures, or mechanisms now in place may let property owners claim compensation for taken property".

While no process has yet been established to avoid this or future unconstitutional tax title takings in Massachusetts, G.L. c. 60 as written does address the issue of how “much of [a] tract of land...may be necessary to satisfy the taxes due” in [an]other section (G.L. c. 60 § 43). “If the taxes are not paid, the collector shall, at the time and place appointed for the sale, sell by public auction, for the amount of the taxes and interest, if any, and necessary intervening charges, **the smallest undivided part of the land which will bring said amount**, or the whole for said amount”. (emphasis added) And foresees the return of the surplus in G.L. c. 60, §28. “The collector shall upon demand give a written account of every sale on distress or seizure and charges, and **pay to the owner any surplus above the taxes**, interest and charges of keeping and sale.” (emphasis added) The First Parcel (3e-33) is the smallest and most marketable of the five Parcels and is alone worth far more than the total of all five tax title accounts combined.

Were the tax foreclosure scheme held to the standard of fair compensation as in eminent domain proceedings, the Eminent Domain statute (G.L. c. 79) provides a process to assess the value of and to return the surplus plus damages. “[A]n order of taking... shall within thirty days ... be recorded in the registry of deeds...Upon the recording ... title to the fee of the property taken ... shall vest in the body politic ... and the right to damages for such taking shall thereupon vest in the persons entitled thereto” G.L. c. 79, §3. The body politic “shall ... award the damages sustained by every person in his property by reason of such taking.” G.L. c. 79, §6 “Immediately after the right to damages becomes vested” the body politic “shall give notice ... and shall state the amount of damages, ... if no damages have been awarded, the time within which he may petition for an award of the same”. G.L. c. 79, §7C The statute continues, “an award of damages ... shall not be made until at least one appraisal has been made” G.L. c. 79, §7A “[A]ny check for the payment of such damages shall be issued ... within sixty days after the right thereto becomes vested”. G.L. c. 79, §7B Not only did Defendant not receive the benefit of a

similar process due to him, no such process exists rendering the tax statute G.L. c. 60 unconstitutional and infirm.

The Eminent Domain statute also addresses damages similar to those that have impacted Mr. DiPietro beyond the surplus. “Any person lawfully occupying real property who is displaced therefrom and caused to move as a result of a taking of such property by eminent domain, shall be paid...the reasonable and necessary expenses incurred by him.” G.L. c. 79, §6A “The damages for property taken under this chapter shall be fixed at the value thereof before the recording of the order of taking, and in case only part of a parcel of land is taken there shall be included damages for all injury to the part not taken caused by the taking... In determining the damages to a parcel of land injured when no part of it has been taken, regard shall be had only to such injury as is special and peculiar to such parcel”. G.L. c. 79, §12

Facts on the Ground

The instant Property is five parcels in two towns. The taking of the property in Bolton decimates the value of the remainder in Stow. The damage to the property that has not been taken is special and particular, as the Parcels taken are the Area and those not taken are the Frontage required to be considered conforming Lots under the zoning bylaws of both towns. (Exhibits A & C) We truly have here a case where the whole is greater than the sum of its parts. Additionally *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) holds that “a taking that requires fair compensation exists when the government creates a regulation that negates all economically beneficial use of a property”. “Lucas's takings claim is not rendered unripe by the fact that he may yet be able to secure a special permit to build on his property.” “If this deprivation amounts to a taking, its limited duration will not bar constitutional relief.” It is well established that temporary takings are as protected by the Constitution as are permanent ones. *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U. S. 304, 318 (1987). Had the town treated Mr. DiPietro fairly relative to honoring

and Variances and releasing the Permits the First Parcel would have been sold in 2016. The tax debt to the Town would have been paid in full and the Second, Third, Fourth and Fifth Parcels would have been redeemed; there would have been no damages.

Following the issuance by the U.S. Supreme Court of *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369 (2023), which found the foreclosure of a tax title without payment of compensation to be an unconstitutional taking, the parties in *Town of Tyngsborough vs. Paula Recco*, (Docket Number: 18 TL 001223) questioned how, and whether, the Massachusetts tax title foreclosure procedure embodied in G.L. c. 60 can be implemented in a constitutional manner.

In the above case this court ruled that the foreclosure of the right of redemption does not effect an unconstitutional taking unless the taking is without compensation. The Town of Tyngsborough requested that the court issue a judgment in some manner requiring the sale of the subject premises with compensation to the defendant taxpayer for any surplus after the payment of outstanding taxes, fees and interest due to the town. The defendant taxpayer asserted that the Land Court is without authority to do so. In the absence of legislative changes, G.L. c. 60 does not address what post-foreclosure judgment remedies may be available to taxpayers for recovery of just compensation, although the "court may impose such other terms as justice and the circumstances warrant" in setting the terms of redemption. See G.L. c. 60, § 68.

It is unclear if this court's authority to partition could be applicable here. Such actions involve suits by co-owners of real estate who desire to end their common undivided ownership. Co-owners generally have the right, under G.L. c. 241, to partition, either by division of the land on the ground (if the land can be divided advantageously) or by sale at public auction, after which the net proceeds are distributed to the owners in accordance with their ownership interests. Land Court Rule 13, effective July 1, 2005, provides that the Massachusetts Rules of Civil Procedure apply to partition proceedings in

the Land Court. The Property, the land in this case, is already divided on the ground into five Parcels; all that's required is to determine the interests in First Parcel.

Timeliness of the Motion

The long and short of it is the instant motion is timely for the most simplistic of reasons: the only legitimate interest of a town in seeking to foreclose rights of redemption is the collection of taxes due on the property, together with other costs and interest. The First Parcel is worth more than that which is owed on all five Parcels; granting Absolute Title to all five takes more than is owed. Doing so without offering a Process to recoup the Surplus is unconstitutional and therefore invalid unless the government pays just compensation at the time of its taking. The town of Bolton did not provide just compensation and a process to do so is lacking in the tax foreclosure scheme. The stricture of Section 69A must give way where the facts clearly establish a denial of due process of law.

In this case the Standard Form Complaint and the statute upon which it is based (G.L. c. 60, §64) deprived Defendant of his property without just compensation. The Plaintiff's Complaint, Claim in the Complaint, Prayer in the Complaint and statute upon which the Complaint is based (G.L. c. 60, Section 64) are unconstitutional on their face and as applied to the Defendant. The judgment as entered denied Mr. DiPietro the due process to claim his right to the surplus and unconstitutionally allowed the Town of Bolton to keep it. Thus, the judgment entered in this case on December 14, 2021 is, at present, a legal nullity.

V. THE COURT MUST VACATE THE JUDGMENT IN ORDER TO ACCOMPLISH JUSTICE

Justice requires that Mr. DiPietro a low-income alpaca farmer who has suffered an unconstitutional taking, be allowed another opportunity to redeem his home and farm and in it his entire life's savings. Mr. DiPietro who has farmed and resided at the locus for nearly 10 years, and fell

behind on his taxes, thanks in part to actions taken by the Town of Bolton, and has been trying since 2016 to work to sell the First Parcel to redeem the others. He was unable to receive authorization from the Conservation Commission and building department to construct on the Property, at first, because of the drought watch and later because the Town blocked these attempts because of his back taxes.

G.L. c. 60 has allowed the Town to go beyond its legitimate interest here, as in all Massachusetts property tax foreclosure actions where the property is worth more than the tax debt, the strict foreclosure unconstitutionally allowed the Town to gain absolute title to the property without providing Mr. DiPietro a method to claim his equity. Municipalities have a powerful financial incentive to foreclose and then keep or sell valuable properties. Such an unconstitutional taking occurred the moment judgment was entered in favor of the Town of Bolton.

Tyler v. Hennepin, found the foreclosure of a tax title without payment of compensation to be an unconstitutional taking. The Massachusetts' Tax Lien Foreclosure Law is unconstitutional in light of the Supreme Court's decision in *Tyler*. The Town of Bolton has "effected a classic taking in which the government directly appropriates private property for its own use." In the *Recco case*, this court ruled that the foreclosure of the right of redemption does not effect an unconstitutional taking unless the taking is without compensation. Mr. DiPietro was not compensated for the surplus. As Justice Brennan explained "once there is a 'taking,' compensation must be awarded" because "[a]s soon as private property has been taken ... the landowner has already suffered a constitutional violation."

The First Parcel is worth more than that which is owed on all five Parcels; granting Absolute Title to all five takes more than is due. And doing so without offering a Process to recoup the surplus is unconstitutional and therefore invalid, as the Town did not pay just compensation at the time of its taking. The stricture of Section 69A must give way where the facts clearly establish a denial of due process of law.

G.L. c. 60, §64 was always unconstitutional Tyler just affirmed this. One simply cannot obtain ownership or possession under color of law, as the constitutionally barred action it stems from is null and void. The instant motion is timely and may be attacked collaterally after judgment enters. The Standard Form Complaint and the statute upon which it is based deprived Defendant of his property without just compensation. The Plaintiff's Complaint, Claim in the Complaint, Prayer in the Complaint and statute upon which the Complaint is based are unconstitutional on their face and as applied to the Defendant. Thus, the December 14, 2021 judgment is, at present, a legal nullity.

Had the Town of Bolton's only interest been the collection of taxes it would have treated Mr. DiPietro fairly and released the permits; the First Parcel would have been sold in 2016. The tax debt to the Town would have been paid in full and the Second, Third, Fourth and Fifth Parcels would have been redeemed; there would have been no damages. However beyond just the surplus, the damage to the property that has not been taken is special and particular, as the parcels taken are the area and those not taken are the frontage required to be considered conforming lots under the zoning bylaws, a case where the whole is greater than the sum of its parts.

The First Parcel (3e-33) is the smallest and most marketable of the five Parcels and this part alone is worth far more than the whole of the five tax title accounts. Therefore Mr. DiPietro now seeks to vacate the judgment pursuant to G.L. c. 60 §§ 69, 69A. If the order vacating the judgment of foreclosure of the equity of redemption in the locus is vacated and a judgment shall enter vacating the foreclosure only as to the Second Parcel (4e-43), the Third Parcel (4e-44), the Fourth Parcel (4e-45) and the Fifth Parcel (4e-46), the surplus from, the First Parcel (3e-33) will be used to redeem the vacated tax titles.

The First Parcel (3e-33) has been assessed since the new variance at over \$170,000 with offers to purchase at over \$200,000 which is well more than the ~\$60,000 total owed on all five tax titles. In

any event there is well over \$100,000 in Surplus Equity from the First Parcel alone. The assessed value of the five Parcels in Bolton is \$375,000 with offers to purchase the entire farm for \$739,000 (Exhibits B, J, K, L & M)

If, per chance, this Court discards these valuations, the calculus would not change under the takings Clause nor would the Town's obligations. The full extent of Defendant's "property" interest under the Takings Clause is the full and entire market value of the real Property at issue here. In his publication, *The Other Foreclosure Crisis, Property Tax Lien Sales*, John Rao of the National Consumer Law Center engaged in a careful study of the tax lien foreclosure process in the various states. Rao, J., *The Other Foreclosure Crisis, Property Tax Lien Sales*, NCLC, July 2012. Rao observes that "[a] forced sale, such as those held in the foreclosure and tax sale process, almost never produces a sale price reflecting the fair market value of the property." *Id.* at 40. After the *Tyler* decision it is imperative that the Court issue an order calculated to ensure that the taxpayer receive an amount approaching the fair market value of the property. To be constitutional, a law granting the power to take private property for public use "must provide for compensation, and a real means of ascertaining the amount." *Sweet v. Rechel*, 159 U.S. 380, 400-01 (1895). "Payment need not precede the seizure; but the means for securing indemnity must be such that the owner will be put to no risk or unreasonable delay." *Id.* (quoting *Haverhill Bridge Proprietors v. Cnty. Comm'rs of Essex*, 103 Mass. 120, 124-25 (1869)); *Bromfield v. Treasurer and Receiver Gen.*, 390 Mass. 665, 668 (1983). In determining the amount of reasonable and just compensation due for the physical appropriation of private property for public use, courts look to the fair market value of the property taken. *See, e.g., Correia v. New Bedford Redevelopment Auth.*, 375 Mass. 360, 361 (1978) ("The measure of damages is the fair market value of the property at the time of the taking."); *Newton Girl Scout Council, Inc. v. Massachusetts Turnpike Auth.*, 335 Mass. 189, 193 (1956); *Tigar v. Mystic River Bridge Auth.*, 329 Mass. 514, 517 (1952). The

IRS has determined that "fair market value" is simply the "price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts..." U.S. Treasury Regulation §1.170A-1(c)(2). It is incumbent upon the Town to provide Defendant with the Surplus i.e. the difference between the fair market value on sale or retention less the Tax Debt. This approach would respect the command of the Takings Clause, Due Process Clause and G.L. c. 60, §28.

In the event a sale of the First Parcel is effected by the Town of Bolton with the imprimatur of the Court, it is demanded that the Town not only comply with G.L. c. 60, §28 but that it only effectuate a sale in the event that the purchasing party makes an offer of purchase which is equal to or above \$200,000.

In the event that the Town decides it will not sell the First Parcel but will, instead, retain it ("Retention") then, in that event, it is further demanded that the Town comply with G.L. c. 60, §28 in the Retention context i.e. - remit a sum of money to the Mr. DiPietro, equal to the difference between the ~\$200,000 market value of the First Parcel and the taxes, interest, charges of keeping and charges of sale as per G.L. c. 60, §28. Said sum will be used to redeem the vacated tax titles. Alternatively Defendant would accept quit claim deeds to Parcels: Second, Third, Fourth and Fifth and the remittance of a sum of money equal to the difference between the ~\$200,000 market value of the First Parcel and the taxes, interest, and charges of keeping of all five Parcels per G.L. c. 60, §28

If for the reasons presented in the *Recco* case or otherwise this court lacks the authority determine the fair market value and surplus or to order the sale of the First Parcel with the above conditions, the United States District Court for the District of Massachusetts (Case No. 4:23-CV-40004-ADB) will determine the "surplus" from, the First Parcel (3e-33) and the process by which it shall be returned to Mr. DiPietro. Such surplus will then be used to redeem the vacated tax titles. Thus

avoiding the issue raised in *Recco*, (18 TL 001223) and allowing Mr. DiPietro to retain his home and farm, thus preserving his equity, which is his entire life's savings.

The relative equities between Mr. DiPietro and the Town also strongly favor vacating the judgment. The Town of Bolton currently has a windfall of over \$600,000 in surplus equity. The Town's interest in the efficient and economic administration is limited to recovering monies owed, an interest that is well-protected by the other statutory methods of collection available to the government. *See, e.g.*, G.L. c. 60, §§ 24-29 (seizing and selling the owner's personal property); G.L. c. 60, § 29 (arresting the owner); G.L. c. 60, § 35 (suing the owner to recover in contract or equity). Conversely Mr. DiPietro will be irreparably harmed if this judgment is not vacated. The loss of the ordinary comforts of human existence, the loss of residence and farm, outweighs the limited fiscal and administrative burdens on the Town, which are small in comparison. Justice requires vacating the judgment.

Additionally removing Mr. DiPietro from the Property, based on color of title before just compensation has been made will also cause irreparable harm. Justice requires eviction actions wait until the this court or the Federal court has made determination of the surplus and/or parties are able to reach a settlement through mediation. Defendant should be allowed to retain possession until fully and justly compensated for the surplus from the First Parcel (3e-33) and 4e-43, 4e-44, 4e-45 and 4e-46 are redeemed. The Town of Bolton has not sold the property, there is no buyer. Therefore Mr. DiPietro also asks that the court Enjoin the Town of Bolton from the Alienation of the Second, Third, Fourth and Fifth Parcels, and from further Eviction actions relative to, any of the five Parcels until then.

VI. CONCLUSION

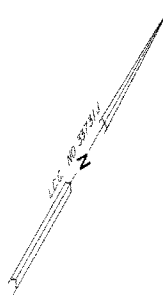
For the foregoing reasons, Mr. DiPietro respectfully requests the Court Vacate the Judgment and permit him an opportunity to redeem his home and farm. And also to Enjoin the Town of Bolton from the Alienation of, or from further Eviction actions relative to, the Property until then.

Dated: December 7, 2023

A handwritten signature in black ink, appearing to read 'Alan DiPietro', written over a horizontal line.

Alan DiPietro, pro se
110 Teele Road
Bolton MA 01740
(351) 210 0639

Exhibit A



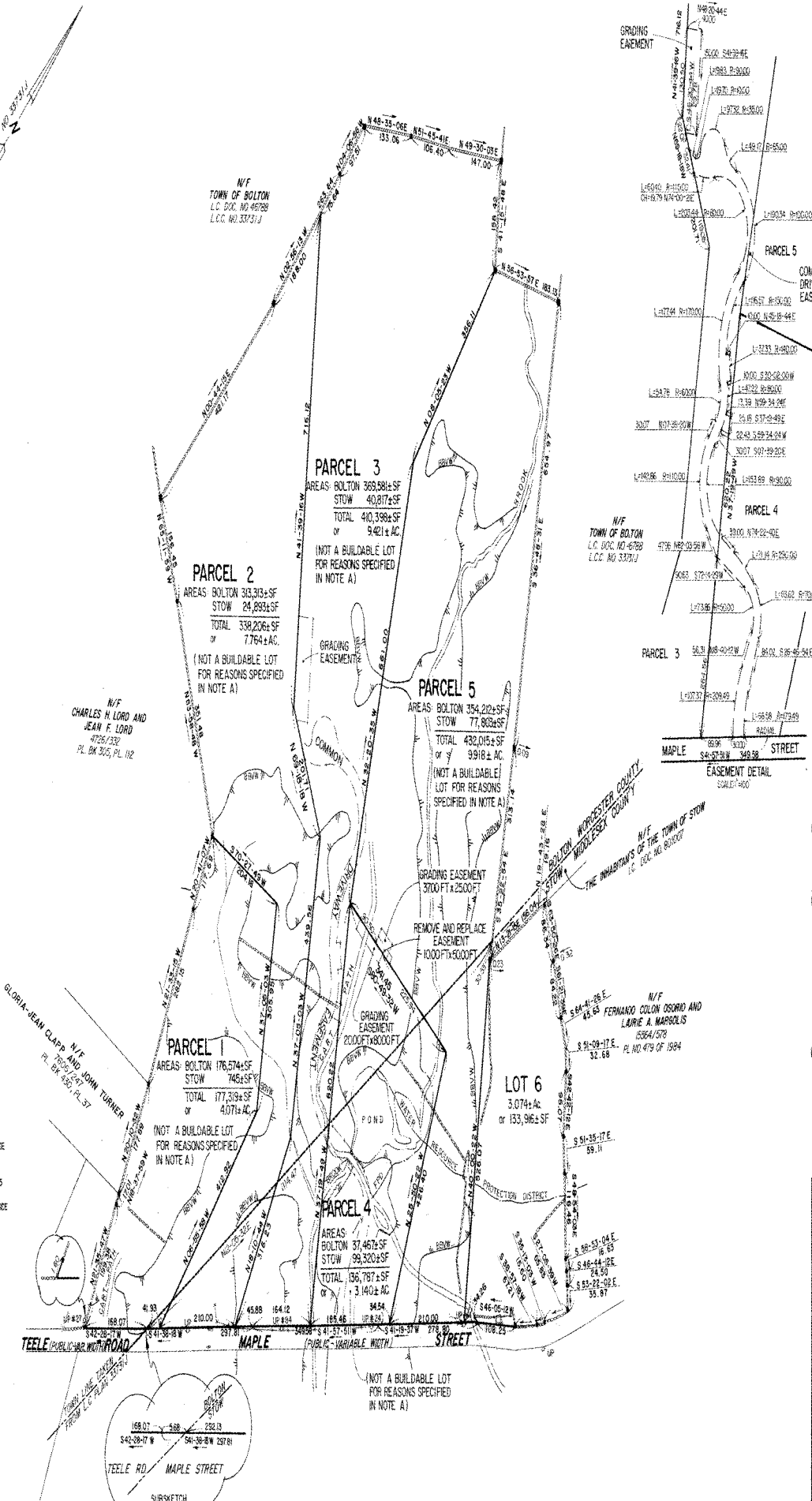
N/F
TOWN OF BOLTON
L.C. NO. 49238
L.C.C. NO. 33731/J

- NOTES
- APPROXIMATE TOWN AND COUNTY LINE SHOWN TAKEN FROM LAND COURT CASE NUMBER 23731/J.
 - ZONING CLASSIFICATION
STOW: RESIDENTIAL ZONE
BOLTON: RESIDENTIAL DISTRICT
 - ASSESSORS MAP
STOW: ASSESSORS MAP P-2, PARCEL NO. 20
BOLTON: ASSESSORS MAP 92, PARCEL NO. 22
 - NO DEEDS EXIST BY THE STOW ZONING BOARD OF APPEALS REGARDING THE LAND OR THE BUILDINGS THEREON.

TOWN OF BOLTON	
APPROVAL UNDER SUBDIVISION CONTROL LAW NOT REQUIRED	BOLTON PLANNING BOARD
<i>Paul R. Gagnier</i>	
<i>Walter M. Gagnier</i>	
<i>John M. Gagnier</i>	
<i>Chris Gagnier</i>	
DATE	8/27/99

- LEGEND:
- DRILL HOLE FOUND
 - BOUND FOUND
 - MONUMENT 0.25 FEET OFF LINE AS INDICATED
 - NOW OR FORMERLY
 - BOUNDARY OF SURROUNDING VEGETATED WETLAND

- NOTE A:
- FOR COMPLIANCE TO ZONING BY-LAWS THE FOLLOWING APPROVALS ARE REQUIRED FOR THE FOLLOWING PARCELS TO BE CONSIDERED BUILDING LOTS:
- | | |
|-------------------------------|-----------------------|
| PARCEL 1 | STOW PARCELS 2, 3 & 4 |
| SECTION 2.5.4.3 | SECTION VII B (1) |
| WATER RESOURCE SPECIAL PERMIT | LOT WIDTH VARIANCE |
-
- | | |
|--------------------------------|----------------------|
| PARCELS 2, 3, 4 & 5 | PARCELS 3 & 4 |
| SECTION 2.4.1.2 | SECTION VII B 4 |
| COMMON DRIVEWAY SPECIAL PERMIT | BUFFER ZONE VARIANCE |
-
- | | |
|------------------------|-----------------------|
| PARCEL 2 | PARCELS 2, 3, 4 & 5 |
| SECTION 2.3.3.3 | SECTION VII J 1 |
| EROSION SPECIAL PERMIT | COMMON DRIVE VARIANCE |
-
- | | |
|-----------------------|---------------------|
| PARCELS 2, 3, 4 & 5 | PARCELS 2, 3, 4 & 5 |
| SECTION 2.4.1.2 (d) | SECTION VII J 1 |
| COMMON DRIVE VARIANCE | |
-
- | | |
|-----------------------|---------------------|
| PARCEL 1, 2, 3, 4 & 5 | PARCELS 2, 3, 4 & 5 |
| SECTION 2.6 | SECTION VII J 1 |
| FRONTAGE VARIANCE | |



TOWN OF STOW
APPROVAL UNDER SUBDIVISION CONTROL LAW NOT REQUIRED
STOW PLANNING BOARD
<i>John M. Gagnier</i>
<i>Walter M. Gagnier</i>
<i>Paul R. Gagnier</i>
DATE
November 12, 1991
TOWN OF BOLTON
APPROVAL UNDER SUBDIVISION CONTROL LAW NOT REQUIRED
BOLTON PLANNING BOARD
<i>Paul R. Gagnier</i>
<i>Walter M. Gagnier</i>
<i>John M. Gagnier</i>
<i>Chris Gagnier</i>
DATE
8/27/99

THIS PLAN IS MEANT AND INTENDED TO SUPERSEDE ALL LOTTING PLANS WHICH PREDATE THE ENDORSEMENT.

I HEREBY CERTIFY THAT:

THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

DATE 8/27/99

Robert J. Buckley

ROBERT J. BUCKLEY, PLS NO. 80328



OWNER: YASIN BALBAKY, TRUSTEE OF THE "ALPHA TRUST"
MIDDLESEX REGISTRY OF DEEDS
13598/383

PLAN OF LAND
IN
STOW, MA
(MIDDLESEX COUNTY)
AND
BOLTON, MA
(WORCESTER COUNTY)

SCALE: 1"=100' DATE: AUGUST 15, 1999
REV: SEPTEMBER 20, 1999
REV: OCTOBER 24, 1999

BEALS AND THOMAS, INC.
THE WESTBOROUGH BUSINESS PARK
200 FREEDOM PARKWAY
WESTBOROUGH, MA 01581

JOB NO. W-714-02 DWG NO. W-714.02.19

Exhibit B



M. T. W. S.
 Max Checks Payable To Town
 Town of Bolton
 600 Main St
 Bolton, MA 01740
 Collector's Office (978) 774-5176
 Office (978) 774-5292

OFFICE HOURS
 M T W T F 9:00 to 2:30 p.m.
 TOWN OF BOLTON

State Tax Form 128
 Revised 7/2009

The Commonwealth of Massachusetts

Bolton
 Name of City or Town

APPLICATION FOR ABATEMENT OF REAL PROPERTY
 PERSONAL PROPERTY

Board of Assessors
 JAN 8 2017
 Bolton, MA 01740

FISCAL YEAR 2017
 General Laws Chapter 59, § 59

THIS APPLICATION IS NOT OPEN TO PUBLIC INSPECTION (See General Laws Chapter 59, § 59)

Return to: _____
 Must be filed with assessor's office on or before the date of first actual (not potential) payment for fiscal year.

INSTRUCTIONS: Complete BOTH sides of application. Please print or type.

A. TAXPAYER INFORMATION.

Name(s) of assessed owner: Alan D. Pietro
 Name(s) and status of applicant (if other than assessed owner) _____
 Subsequent owner (acquired title after January 1) on _____
 Administrator/executor. Mortgagee.
 Lessee. Other. Specify _____
 Mailing address 4 Riverside Park St Telephone No. _____
 No. Street City/Town Zip Code MA 01775
 Amounts and dates of tax payments _____

B. PROPERTY IDENTIFICATION. Complete using information as it appears on tax bill.

Tax bill no. 103 Assessed valuation \$ _____
 Location 110 Teele Rd.
 No. Street
 Description _____
 Real: Parcel ID (map-block-lot) 3E-33 Land a/c _____
 Personal: Property type _____

TOWN OF BOLTON
 FISCAL YEAR 2017 ACTUAL REAL ESTATE
 3rd QUARTER PAYMENT
 TAX VALUE: 177,700
 SPECIAL ASSESSMENT: 177,700

PROPERTY	TYPE	RES	Total
DIPIETRO ALAN	RES	21.20	21.20
TEELE RD	RES	0.00	0.00
4.05 Acres			
003 E-0000-0033.0			
52462364			
06/23/2014			
Per \$1,000			

DIPIETRO ALAN
 RIVERSIDE PARK
 BOLTON, MA 01775

Exhibit C



TOWN OF BOLTON

BOARD OF APPEALS

Town Hall, 663 Main Street, Bolton MA 01740
Phone 978-779-3308 Fax 978-779-5461

FINDINGS AND DECISION



Bk: 55832 Pg: 236
Page: 1 of 6 07/14/2016 09:33 AM WD

Applicant name and address: Alan DePietro
4 Riverside Park
Stow, MA 01775

Zoning Relief sought: Variance to Code of Bolton, Division I, Part III, Zoning Bylaw, Chapter 250, Section 3 – Dimensional Regulations – Residential Frontage and Section 28 – Terms Defined – Lot Frontage for property located at 110 Teele Road in Bolton MA and shown on Assessors Map 3.00E-033.

Description:

Property Owner, Property address and zoning district: Alan DiPietro, 110 Teele Road

Public Hearing date(s): May 18, 2016, May 31, 2016

Board Members: Gerard Ahearn, Brad Reed, Andy Kitsch and Jack Sargent

Decision and Vote: To grant the variance request. Vote = 4/0/0

1. PROCEDURAL HISTORY

On April 11, 2016 the Applicant Alan DiPietro, applied for a variance from the Board of Appeals pursuant to Bolton Zoning By-Laws Section 3 – Dimensional Regulations – Residential Frontage and Section 28 – Terms Defined – Lot Frontage for property locate at 110 Teele Road, Bolton, MA 01740.

The application filed with the Board of Appeals contained the following items:

1. Application for Hearing: Part I Background Information;
2. Certified Abutters List from the Town's Assessors office;
3. A plot plan/drawing showing abutting properties and parcels of land, specifically parcel 1 in Bolton and Stow for which the applicant is requesting

B 52462 P 364

uab

the variance defined above. The applicant requests relief from the provision of Section 250-13 Dimensional Schedule – Residential Frontage – 200 feet ; 250-28 Terms Defined – Lot Frontage. Parcel 1 from Assessors Map 30-33 has 210 feet of contiguous frontage, though due to the Town line, only 168 feet of the frontage is located within the Town of Bolton, MA (the residual within the Town of Stow, MA). The Applicant is seeking a Variance of approximately 32'.

A notice of the public hearing on the Original Application was published in the Bolton Common, a newspaper with general circulation in the Town of Bolton on April 29, 2016 and May 6, 2016.

Posted in a conspicuous place in the Bolton Town Hall on April 11, 2016 which was at least fourteen (14) days prior to the session of the hearing which the notice preceded; and

Mailed, postpaid on April 26, 2016, which were at least fourteen (14) days before the session of the hearing which the notice preceded, to the petitioner, abutters, owners and other town departments.

A duly posted open public hearing was held on May 18, 2016 at 7:00PM at the Houghton Building located at 697 Main Street, Bolton, MA 01740. Members present were Gerard Ahearn, Brad Reed, Alexander Kischitz and Jack Sargent. The Applicant was informed by the Board that because only four (4) board members were present, that any decision on the variance application would require a 4-0 unanimous vote. The Applicant was informed that he could withdraw the application if he so desired given the fact that stated about the unanimous vote requirement. The Applicant stated it was his intent to proceed with the hearing.

The Board took initial input from the Applicant (i.e., a walk-through of the Application and history of the property) and input and inquiries from certain Town residents. One resident, Ms. Maria Shoemaker (106 Teele Road), questioned whether or not the Applicant can meet all conditions for a variance. The Board provided a summary of the four (4) findings that must be met under M.G.L, Chapter 40 A, Section 10 (see Criteria noted below). The Board also reviewed prior ZBA hearing minutes from October 22, 1991 and October 29, 1991. The October 29, 1991 concluded with the ZBA granting a variance (i.e., the lapsed variance). Additionally, the Board reviewed a March 1, 2016 Bolton Planning Board Memorandum to the Board of Assessors, in which the Planning Board reviewed the zoning history of the properties identified in Assessor Map 3.00E-033. A key question that arose among Board members present that centered on the circumstance of the majority of the frontage being within Bolton, with a small portion located with Stow. This circumstance was specific to the property that was not generally affecting the zoning district in which it is located, but the Board questioned whether or not the fact that the parcel extended into Stow, MA could be a condition to

consider as contributing to a hardship determination. The Board chose to have this inquiry raised to Town Counsel before continuing discussions on the Variance. The Board voted 4/0/0 to continue the hearing until May 31, 2016 at 7:00PM in the same location.

On May 31, 2016 at 7:00PM at the Houghton Building located at 697 Main Street, Bolton, MA 01740, the Board continued hearing the Variance application. Members present were Gerard Ahearn, Brad Reed, Alexander Kischitz and Jack Sargent. At the meeting, the Board reviewed the May 26, 2016 e-mail response from Mr. Brian R. Falk, Associate counsel at Mirick, O'Connell, DeMallie & Lougee, LLP (Town Counsel), to the ZBA's question as to whether Town/County lines can factor in as a hardship for a lot. Attorney Falk summarized that "...the municipal boundary line dividing the lot should be considered by the ZBA in this case, but that fact alone does not compel the ZBA to grant a variance." In Attorney Falk's response, he also noted the four (4) specific areas of findings that the Board is required to make in order to issue a Variance.

At the May 31, 2016 hearing, the Board asked the Applicant if it was practical to restructure Parcel to by contributing land from abutting Parcel 2 in order to potentially make Parcel 1 a backland lot. The Applicant responded that there would be prohibited costs to him to consider such a plan, and that the current Variance request only considers Parcel 1.

After reviewing and discussing the above with the Applicant and those in attendance, the Board entertained a motion to close the public comment portion of the Hearing. Upon second of the motion, the Board voted 4/0/0 to close the public comment portion of the Hearing.

2. FINDINGS

A. General

- 1. The subject property is located on 110 Teele Road (Assessor Map 3.00E-033) and is currently owned by Alan DiPietro (deed reference Book 52462, Page 364, and Book 918, Page 118). The Parcel 1 property is zoned residential.*
- 2. The Applicant submitted a complete application in accordance with the Board's Rules and Regulations.*

The Hearing was called to order on May 18, 2016 at 7:00PM by chairman, Gerard Ahearn. The Board heard testimony from the Applicant, Alan DiPietro. Mr. DiPietro explained that Parcel 1 did not meet current zoning regulations because a portion of the contiguous 210 feet of lot frontage (approximately 42 feet) is located within the Town of Stow. The Applicant acknowledged that a former granted variance by the Town of Bolton ZBA (October 29, 1991) lapsed as it had not been recorded. The Applicant acquired the property in June 2015. The Applicant asserted that without the variance,

Parcel 1 could not be built upon. The Applicant also asserted that the lot's plans have been recorded, and that the lot has been taxed in Bolton as a buildable lot for 25 year or so.

A. Variance Criteria

Statutory criteria for granting a Variance under M.G.L Chapter 40A, Section 10 is as follows:

1. That there are circumstances that exist relating to the soil conditions, shape, or topography of the land or structures that uniquely affect such land or structures, but that do not affect generally the zoning district in which such land is located; and,
2. That literal enforcement of the provisions of the Bolton Zoning Bylaws would involve substantial hardship, financial or otherwise, to the applicant; and,
3. That the desired relief may be granted without substantial detriment to the public good; and
4. That the desired relief may be granted without nullifying or substantially derogating from the intent and purpose of Bolton Zoning Bylaws.

All criteria must be met to grant the Variance. During its deliberations, the Board of Appeals considered whether all of the above-referenced criteria were met in the application.

B. Specific Findings

1. *There are circumstances that exist relating to the soil conditions, shape or topography of such land (i.e., the municipal boundary line) of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which Parcel 1 is located.*
2. *Literal enforcement of the provision of the Zoning Bylaw would involve substantial financial hardship to the applicant if the Applicant had to reconfigure abutting land to try and have Parcel 1 be zoned a backland lot, or if the Applicant could not develop a single family home on an otherwise buildable residentially zoned lot.*
3. *The desired relief from the documented provision of the Zoning Bylaw may be granted without substantial detriment to the public good. While some neighbors oppose the Variance request, the result of the request would be the siting of a single family residence on Parcel 1, and that is consistent with the Zoning area.*

4. *The request may be granted without nullifying or substantially derogating from the intent and purpose of the Bolton Zoning Bylaws, as only a small portion of the continuous frontage would be located in Stow, but with the cart path access to Parcel 1 being completely from a street in Bolton.*

3. DECISION

In view of the foregoing, the Board of Appeals hereby decides that the application meets all requisite criteria under MGL Chapter 40A Section 10. Therefore, the Board decided to *grant a Variance to the Applicant that provides relief from the provision of Section 250-13 Dimensional Schedule – Residential Frontage – 200 feet; 250-28 Terms Defined – Lot Frontage. This Variance is granted in accordance with the terms and conditions stated below.*

Conditions

1. Any appeals from the decision of the Board of Appeals can be made only to the Court and must be pursuant to Section 17 Chapter 40A (G.L.) as amended, and must be filed within twenty (20) days after the date of filing this decision with the Town Clerk.

A copy of this decision, certified by the Town Clerk, must be filed with the Worcester District Registry of Deeds to become valid.

RECORD OF VOTE


The Board of Appeals voted unanimously (4/0/0) to grant a Variance subject to the above-stated terms and conditions:



Gerard Ahearn (Chairman) (Member designated to sign on behalf of the Board)

2. Filed with the Town Clerk on

JUNE 14, 2016



Town Clerk

2016 JUN 14 PM 3:08

3. Certificate of No Appeal

The undersigned, being the Town Clerk of the Town of Bolton, this is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Pamela H. Powell

Copy of Findings and Decision mailed to:

2018 JUL -5 PM 9:30

Town Clerk

Date

Exhibit D

Filing Fee \$35

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth



2017 00020321

Bk: 56786 Pg: 165

Page: 1 of 2 02/27/2017 01:00 PM WD

Declaration of Homestead for Homes Owned by Natural Persons *(General Laws Chapter 188)*

In situations where the home is owned by multiple owners, each owner may be best served to complete a separate declaration of homestead.

1. I, Alan DiPietro
(insert name of owner)

We, _____
(insert name of owners)

_____ hereby declare homestead pursuant to M.G.L. c.188 and state that I/we own the home described below and occupy or intend to occupy the home as my/our principal residence.

Owner Information

2. Check all that apply:

I/we, _____ am elderly (62 years of age or older).
(insert name (s))

I/we, _____
(insert name (s))

am/are disabled (have a physical or mental impairment that meets the disability requirements for Supplemental Security Income under 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C). One of the following must be attached: 1) an original or certified copy of a disability award letter issued to the person by the United States Social Security Administration, or 2) a letter signed by a physician registered with the board of registration in medicine certifying that each person meets the disability requirements stated in 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C).

I am married to _____ who is not a co-owner of the home but who occupies or intends to occupy the home as his/her principal residence.

I/we, _____
(insert name (s))

am/are servicemember(s) who may be subject to protection under the servicemember(s) Civil Relief Act, 50 U.S.C. App 533, should I/we be called to active duty.

Home Information

3. Address: 110 Teele Road, Bolton, Massachusetts.
(street number and name, city/town)

4. Select ONE of the following:

Deed is recorded in Worcester Registry of Deeds in 52462 and 364
(district/county) (book) (page)

Certificate of Title _____ registered in the Land Registration Office _____ and _____
(number) (book) (page)

Inheritance from _____, Docket number _____
(name of previous owner)
_____ in _____
(number) (county)

For manufactured homes, license number _____
(number)

[Handwritten Signature]
(over)

5. I/we, whose names are signed on this document, acknowledge that I/we sign it voluntarily for its stated purpose.

To be signed by Applicant(s) in front of Notary Public.

Signed under pains and penalties of perjury this

Twenty Seventh day of February, 2017

[Handwritten Signature]

For Use by Notary Public Only:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

February 27, 2017, before me, the undersigned notary public, personally appeared

Alan DiPietro
(name(s) of the document signer(s))

proved to me through satisfactory evidence of identification, which were MA Drivers Lic
(drivers license, passport, etc.)

to be the person(s) who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) (their) knowledge and belief.

Notary Public: *[Handwritten Signature]*

My commission expires: _____

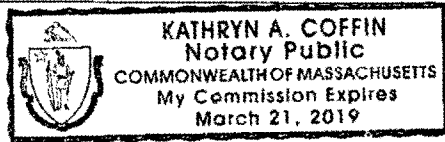


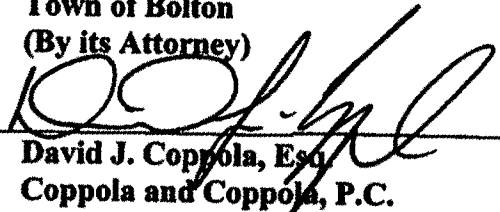
Exhibit E

CERTIFICATE OF SERVICE

I, David J. Coppola, Attorney for Town of Bolton, hereby certify that I have served the foregoing documents by mailing a copy of the same, U.S. First Class mail, postage prepaid, and overnight FedEx delivery, to the following:

**Alan DiPietro
110 Teele Road
Bolton, MA 01740**

**Town of Bolton
(By its Attorney)**

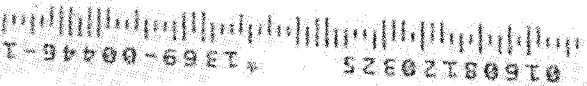
A handwritten signature in black ink, appearing to read "D. J. Coppola", is written over a horizontal line.

**David J. Coppola, Esq.
Coppola and Coppola, P.C.
40 South Street
Marblehead, MA 01945
BBO #678804
Tel: (781) 639-0140
Fax: (781) 639-4416
david@coppolalaw.us**

DATED: July 25, 2022

Exhibit F

COPY



BOSTON
120 AM MA 021
05 JUN 17
PM 3 L

STAGE PITNEY BOWES
326998198978805
ZIP 01508 \$ 000.46
02 1W
0001403095 JUN 05 2017

BC: 01608120325
UNABLE TO FORWARD
NO SUCH NUMBER
RETURN TO SENDER
7206/11

RECEIVED

JUN 21 2017

CLERK OF COURTS
WORCESTER COUNTY

17-789

Alan DiPietro
vs
Alan DiPietro

TO:
Alan DiPietro
201 Maple Street
Stow, MA 01775

01775-122001

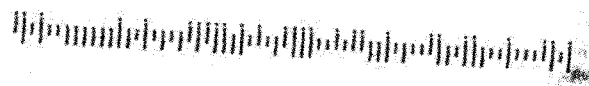


Exhibit G



Alan DiPietro <alandipietro@gmail.com>

BOLTON and STOW v. DiPietro: Site Inspection

1 message

McCay, David K. <dmccay@mirickoconnell.com>

Mon, Jun 12, 2017 at 3:01 PM

To: "Alan DiPietro (alandipietro@gmail.com)" <alandipietro@gmail.com>

Cc: "Kathy Sferra (Conservation@stow-ma.gov)" <Conservation@stow-ma.gov>, Rebecca Longvall <concom@townofbolton.com>, Ingeborg Hegemann Clark <iehegemann@gmail.com>, jeffrey BRYAN <jeffreybryan3@gmail.com>, "Schmitz, Judith (DEP)" <judith.schmitz@state.ma.us>

Dear Mr. DiPietro:

Please see the attached letter which was sent to you on May 31st regarding the site inspection of your property scheduled for tomorrow, June 13 at 3:00 pm. According to the USPS, the certified mail copy of the letter was returned to my office as "Addressee Unknown." My office has not received as returned either the certified or regular mail copies sent to your 201 Maple Road address. In any event, the letter and the Court's order allowing the inspection are attached, and the inspection will proceed tomorrow per the Court's Order.

Should you have any questions, please do not hesitate to contact me.

Best regards,

MIRICK O'CONNELL
ATTORNEYS AT LAW

DAVID K. MCCAY

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

t 508.860.1460 | f 508.983.6273

dmccay@mirickoconnell.com | Bio

Please visit our website: www.mirickoconnell.com

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Exhibit H

MIRICK O'CONNELL

A T T O R N E Y S A T L A W

Robert B. Gibbons
Mirick O'Connell
1800 West Park Drive, Suite 400
Westborough, MA 01581-3926
rgibbons@mirickoconnell.com
t 508.898.1501
f 508.983.6252

March 14, 2019

VIA EMAIL

Mr. Alan DiPietro

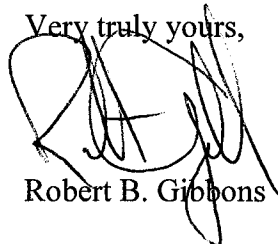
Re: Town of Bolton

Dear Mr. DiPietro:

As you know, this office serves as counsel to the Town of Bolton (the "Town"). The Town Administrator has forwarded to me your recent emails to certain Town employees wherein you continue inquiry about legal matters. While the Town's employees are available to assist you with administrative inquires, they cannot provide you with any legal advice. If you have questions regarding legal process or the legal implications of certain actions, I suggest you retain an attorney to assist you with those matters. Town employees are not in the position, nor are they required, to answer questions that are akin to requests for legal guidance. With regard to your ongoing inquiries regarding outstanding property taxes, it is my understanding that the Town Treasurer has provided you with a payment plan that upon timely compliance will resolve the matter.

If you have any questions regarding this matter, I would request that all such questions and correspondence come to me.

Very truly yours,



Robert B. Gibbons

cc: Donald Lowe, Town Administrator

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

Exhibit I



Alan DiPietro <alandipietro@gmail.com>

Town of Bolton

20 messages

Gibbons, Robert B. <rgibbons@mirickoconnell.com>
 To: "alandipietro@gmail.com" <alandipietro@gmail.com>

Thu, Mar 14, 2019 at 7:02 AM

Mr. DiPietro,

Please see attached letter.

Regards,

Bob Gibbons

**ROBERT B. GIBBONS**

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP
 1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926
 508.898.1501 | f 508.983.6252
 rgibbons@mirickoconnell.com | Bio

Please visit our website: www.mirickoconnell.com

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20190314065829.pdf
41K

Alan DiPietro <alandipietro@gmail.com>
 To: "Judith.Schmitz@state.ma.us" <Judith.Schmitz@state.ma.us>
 Bcc: Jeri Dipietro <sunsunbrown@gmail.com>

Thu, Mar 14, 2019 at 7:24 AM

Judith

Please see attached letter from the Town of Bolton. Everything is a legal issue and therefore the Town Employees are not required to ever answer any questions, and I must hire an attorney which I can not afford. In order to obtain the permits to sell the property to pay the taxes. But I can't sell to pay the taxes because the town of Bolton won't issue the permits because I own the taxes. If I could afford to pay an attorney I could afford to pay the taxes.

What is the status of my Massachusetts State "Order of Conditions" it is my understanding that this could not be withheld by the Town of Bolton. Are they only withholding the Local "Order of Conditions"

Where can I access the approved and issued State "Order of Conditions" and what is my recourse if the Town of Bolton has not issued this in over a year from the signed approval.

CE 112-0660

Thank You
 Alan DiPietro
 110 Teele Road
 Bolton MA 01740
 978 333 4345
 [Quoted text hidden]

20190314065829.pdf
41K

Alan DiPietro <alandipietro@gmail.com>
 To: rgibbons@mirickoconnell.com
 Bcc: djo@oneilbarrister.com, Jeri Dipietro <sunsunbrown@gmail.com>

Thu, Mar 14, 2019 at 8:49 AM

Hello Bob

I have in all earnest been trying since 2016 to sell Lot 3e-33 so that I can pay the back taxes I owe. The buyers I had lined up in 2016 as well as all others since have made it very clear that no one is going to buy my lot without an order of conditions and septic permit.

The order of conditions for this Lot was approved and signed over a year ago but is still being withheld. I was told then that this was because I owed back taxes. While the payment plans that have been presented by the collectors office are generous, I am still unable to make such payments unless and until I can sell Lot 3e-33.

In order to save the town and myself the cost and effort of litigation in Land Court I would like to understand how these permits can be released so that I will be able to sell my lot and pay what I owe.

Why are the permits being held up?

If the permits are being withheld per section 215-2 of the town by-law,

"The licensing authority **may** deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the tax collector....."<https://ecode360.com/14850159>

Then it is not mandatory but at the discretion of the "licensing authority" to deny, revoke etc.

Who is the "licensing authority" and what is the process to officially request that my permits be issued so I can sell and pay?

Section 215-2 also states:

".....*provided, however, written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing.....*" 215-2 <https://ecode360.com/14850159>

I don't recall being given written notice of this.

When was the hearing for this matter held, and what was the outcome?

I would like to formally request that the Town of Bolton issue the already approved and signed Order of Conditions for Lot 3e-33 and allow the same for the upcoming Septic Permit, without the back taxes being paid.

What is the process to make this happen?

Thank You for Your Assistance

Alan DiPietro
110 Teele Road
Bolton MA 01740

[Quoted text hidden]

Alan DiPietro <alandipietro@gmail.com>

Wed, Apr 3, 2019 at 8:27 AM

To: rgibbons@mirickoconnell.com

Cc: "Child, Denise (DEP)" <denise.child@state.ma.us>, "Schmitz, Judith (DEP)" <Judith.Schmitz@state.ma.us>

Bcc: djo@oneilbarrister.com, Jeri Dipietro <sunsunbrown@gmail.com>, Bryan Williamson <Bryanwilliamson451@gmail.com>, Sarina DiPietro <sarina.dipietro@gmail.com>, Kristin Kyzivat <kekyzivat@comcast.net>

Hello Bob

I wanted to make sure you received my email from March 14, directing my questions to you.

Have you had a chance to inquire as to the status of my Order of Conditions and what will be required to release this and the Subsurface Disposal Permit?

I would like to understand both the status of the Local Permit and the State Permit. And what is necessary to release them.

I am trying to sell the property so that I can pay my back taxes and we can avoid Land Court. As general Counsel I assume you would be co-coordinating with Coppola and Coppola in regards to redeeming the Tax Title on this property. The Town seems to be at odds with itself demanding payment but at the same time preventing it.

Please let me know ASAP how to proceed.

I would like to formally request that the Town of Bolton issue the already approved and signed Order of Conditions for Lot 3e-33 and allow the same for the upcoming Septic Permit, without the back taxes being paid.

Thank You
Alan DiPietro
110 Teele Road
Bolton MA 01740

978 333 4345
alandipietro@gmail.com

[Quoted text hidden]

Alan DiPietro <alandipietro@gmail.com>

Thu, Apr 11, 2019 at 9:25 AM

To: rgibbons@mirickoconnell.com

Cc: "Child, Denise (DEP)" <denise.child@state.ma.us>, "Schmitz, Judith (DEP)" <Judith.Schmitz@state.ma.us>

Good Morning Bob

Are these email reaching you?

The main question I would like you to answer is clearly administrative and not a request for legal advice.

I would like to formally request that the Town of Bolton issue the already approved and signed Order of Conditions for Lot 3e-33 and allow the same for the upcoming Septic Permit, without the back taxes being paid.

What is the process, and of whom do I request this?

If the permits are being withheld per section 215-2 of the town by-law,

"The licensing authority **may** deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the tax collector....."<https://ecode360.com/14850159>

Then it is not mandatory but at the discretion of the "licensing authority" to deny, revoke etc.

Who is the "licensing authority" and what is the process to officially request that my permits be issued so I can sell and pay?

Section 215-2 also states:

".....,provided, however, written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing....." 215-2 <https://ecode360.com/14850159>

I don't recall being given written notice of this.
When was the hearing for this matter held, and what was the outcome?

I look forward to working with the Town to resolve this issue.
Thank You for Your Assistance

Alan DiPietro
110 Teele Road
Bolton MA 01740
[Quoted text hidden]

Gibbons, Robert B. <rgibbons@mirickoconnell.com>
To: Alan DiPietro <alandipietro@gmail.com>
Cc: "Child, Denise (DEP)" <denise.child@state.ma.us>, "Schmitz, Judith (DEP)" <Judith.Schmitz@state.ma.us>

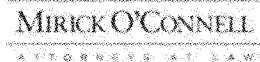
Fri, Apr 12, 2019 at 1:01 PM

Mr. DiPietro,

Let me follow-up with the Town regarding the status of the Order of Conditions. I will circle back with you.

Regards,

Bob Gibbons



ROBERT B. GIBBONS
Partner
Mirick, O'Connell, DeMallie & Lougee, LLP
1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926
508.898.1501 | f 508.983.6252
rgibbons@mirickoconnell.com | Bio



Please visit our website: www.mirickoconnell.com

From: Alan DiPietro <alandipietro@gmail.com>
Sent: Thursday, April 11, 2019 9:26 AM
To: Gibbons, Robert B. <rgibbons@mirickoconnell.com>
Cc: Child, Denise (DEP) <denise.child@state.ma.us>; Schmitz, Judith (DEP) <Judith.Schmitz@state.ma.us>
Subject: Re: Town of Bolton

This Message originated outside of Mirick O'Connell.

Good Morning Bob

Are these email reaching you?

The main question I would like you to answer is clearly administrative and not a request for legal advice.

I would like to formally request that the Town of Bolton issue the already approved and signed Order of Conditions for Lot 3e-33 and allow the same for the upcoming Septic Permit, without the back taxes being paid.

What is the process, and of whom do I request this?

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"The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the tax collector....."https://ecode360.com/14850159

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When was the hearing for this matter held, and what was the outcome?

I look forward to working with the Town to resolve this issue.

Thank You for Your Assistance

[Quoted text hidden]

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ROBERT B. GIBBONS

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926

508.898.1501 | f 508.983.6252

rgibbons@mirickoconnell.com | Bio

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[Quoted text hidden]

Mr. DiPietro,

I will reach out to the Town and get back to you.

Regards,

Bob Gibbons



ROBERT B. GIBBONS
Partner
Mirick, O'Connell, DeMallie & Lougee, LLP
1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926
508.898.1501 | f 508.983.6252
rgibbons@mirickoconnell.com | Bio



Please visit our website: www.mirickoconnell.com

From: Alan DiPietro <alandipietro@gmail.com>
Sent: Wednesday, April 03, 2019 8:27 AM
To: Gibbons, Robert B. <rgibbons@mirickoconnell.com>
Cc: Child, Denise (DEP) <denise.child@state.ma.us>; Schmitz, Judith (DEP) <Judith.Schmitz@state.ma.us>
Subject: Re: Town of Bolton

This Message originated outside of Mirick O'Connell.

Hello Bob

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]
[Quoted text hidden]

[Quoted text hidden]

[Redacted signature box]

ROBERT B. GIBBONS
Partner
Mirick, O'Connell, DeMallie & Lougee, LLP
1800 West Park Drive | Suite 400 | Westborough | MA | 01581-3926
508.898.1501 | f 508.983.6252
rgibbons@mirickoconnell.com | Bio

[Redacted signature box]

Please visit our website: www.mirickoconnell.com

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[Quoted text hidden]

Alan DiPietro <alandipietro@gmail.com>
 To: "Gibbons, Robert B." <rgibbons@mirickoconnell.com>
 Cc: "Child, Denise (DEP)" <denise.child@state.ma.us>, "Schmitz, Judith (DEP)" <Judith.Schmitz@state.ma.us>
 Bcc: Don O'Neil <djo@oneilbarrister.com>

Tue, Oct 22, 2019 at 10:17 AM

Good morning Bob

Have you had a chance to follow-up with the Town regarding the status of the Order of Conditions?

I have just encountered another problem. It appears that Conservation Commission is blocking the approval of my Forest Cutting Plan.

Can you please explain to me why? and what I need to do to resolve this issue?

Please let me know when the town will release my permits so that I can sell my lot and pay what I owe.

Thanks so much for your attention to this issue.

Alan DiPietro
 110 Teele Rd
 Bolton MA 01740

[Quoted text hidden]

Alan DiPietro <alandipietro@gmail.com>
 To: "Freker, Karen (HOU)" <Karen.freker@mahouse.gov>, "Hogan, Kate - Rep. (HOU)" <kate.hogan@mahouse.gov>, "Gibbons, Robert B." <rgibbons@mirickoconnell.com>
 Bcc: Don O'Neil <djo@oneilbarrister.com>

Fri, Feb 7, 2020 at 11:29 AM

Good morning Bob

Have you had a chance to follow-up with the Town regarding the status of the Order of Conditions?

As I am sure you are aware the town is now trying to foreclose on the tax lien against my property.

The Town of Bolton is withholding the already signed approved permit on the lot I've been trying to sell, because of back taxes and thus preventing me from selling and being able to pay the back taxes etc. Town employees have been telling interested buyers they will not even discuss options to bring the property into compliance until the taxes are paid. Multiple Buyers have walked away because of this. Had the town released the permits instead of ignoring me for over a year they would have been paid in full already

Please let me know when the town will release my permits so that I can sell my lot and pay what I owe.

Thanks so much for your attention to this issue.

Alan DiPietro
 110 Teele Rd
 Bolton MA 01740

978 333 4345

[Quoted text hidden]

Alan DiPietro <alandipietro@gmail.com>
 To: "Freker, Karen (HOU)" <Karen.freker@mahouse.gov>, "Hogan, Kate - Rep. (HOU)" <kate.hogan@mahouse.gov>, "Gibbons, Robert B." <rgibbons@mirickoconnell.com>
 Bcc: Don O'Neil <djo@oneilbarrister.com>

Fri, Feb 7, 2020 at 12:17 PM

On Mon, Mar 11, 2019 at 9:26 AM Alan DiPietro <alandipietro@gmail.com> wrote:
 Thank You Rebbecca

I need these permit(s) issued, in order to sell, so that I can pay my back taxes.


How do I ask the "Town" if it will release my permit(s)?

When was the hearing relative to "denying, revoking or suspending a license or permit" held?

"provided, however, written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing" 215-2 https://ecode360.com/14850159

I would like to request a hearing. How do I do this?

[Quoted text hidden]

 OrderOfConditions.pdf
 2957K

Alan DiPietro <alandipietro@gmail.com>
 To: "Gibbons, Robert B." <rgibbons@mirickoconnell.com>
 Cc: "Eldridge, James (SEN)" <James.Eldridge@masenate.gov>, "Freker, Karen (HOU)" <Karen.freker@mahouse.gov>, "Hogan, Kate - Rep. (HOU)" <kate.hogan@mahouse.gov>, ago@state.ma.us
 Bcc: Kristin Kyzivat <kekyzivat@comcast.net>, Paul Kyzivat <pkyzivat@alum.mit.edu>, Jeri Dipietro <sunsunbrown@gmail.com>

Thu, Mar 12, 2020 at 11:54 AM

Hello Bob,

The Town of Bolton is withholding the already signed approved permit on the lot I've been trying to sell, because of back taxes and thus preventing me from selling and being able to pay the back taxes etc. Town employees have been telling interested buyers they will not even discuss options to bring the property into compliance until the taxes are paid. Multiple Buyers have walked away because of this. Had the town released the permits instead of ignoring me for over a year they would have been paid in full already

As I am sure you are aware the town is now trying to foreclose on the tax lien against my property.

Have you had a chance to follow-up with the Town regarding the status of the Order of Conditions?

As I am sure you are well aware, Town employees, using the back taxes as an excuse, are still refusing to speak with buyers about their desire to resolve this situation.

Per your March 14, 2019 letter, I was told to direct all questions to you, Town Counsel, Yet you have not responded to my emails and inquiries since. Had the town released the permits instead of severing all communication with me for over a year and refusing to deal with potential buyers, many who have since walked away, the Town would have been paid in full already.

The already signed and approved Order of Conditions for Parcel I (3e-33), based on the NOI required by the Superior Court Order and thus fully compliant in all regards, should be released and the Septic Permit for Parcel I (3e-33) released upon approval, thus allowing me to sell Parcel I (3e-33) and pay all back taxes, money judgements and liens on the property when sold.

There is no reason that this situation cannot be resolved with a little cooperation from the town.
I await your response.

Alan DiPietro
110 Teele Rd
Bolton MA 01740

978 333 4345

Attached and included below is my response to the Land Court,

I humbly request and pray that the court order the release of the previously signed and approved permits for Parcel I (3e-33) and provide time to sell the property and redeem the tax titles. The town of Bolton has been at the same time demanding payment and withholding permits preventing the sale and payment of the back taxes on my farm and homestead.

The farm is composed of five lots in two towns Bolton (Worcester County) and Stow (Middlesex County). The Town of Bolton has assessed their portion of these five lots at \$375,000. The total back taxes interest etc. are currently approximately \$42,000. The Town of Bolton is preventing me from selling and recovering equity by withholding signed approved permits and discouraging buyers, ostensibly for the purpose of recovering back taxes. There is no risk to the town to wait until I am able to sell and recoup the excess value beyond what is owed. On the other hand I will be irreparably harmed by the loss of my farm and homestead if I am not allowed to sell and redeem.

I have in all earnest been trying, since 2016, to sell Parcel I (3e-33) so that I can pay the back taxes I owe. There has been and continues to be interest in the property. The buyers I had lined up in 2016 as well as all the others since have made it very clear that no one is going to buy my lot without the order of conditions and septic permit being released.

The order of conditions for this Lot was approved and signed over two years ago but is still being withheld. I was told then that this was because I owed back taxes. Parcel I (3e-33) has successfully perc'd and the septic permit is awaiting submission until the tax situation is resolved. I was and am still unable to pay what I owe unless and until I can sell Parcel I (3e-33).

Permits are being withheld per section 215-2 of the Bolton Town by-law.

*"The licensing authority **may** deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority from the tax collector....."*

".....provided, however, written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing....."

<https://ecode360.com/14850159>

There has never been a hearing on this matter.

March 2019, I was told to direct all questions to the Town Counsel, who has not responded to my emails and inquiries since. Had the town released the permits instead of severing all communication with me for over a year and refusing to deal with potential buyers, who have since walked away, the Town would have been paid in full already.

This week a potential buyer stopped by the Bolton Town Hall to inquire about the property. The Conservation Agent told him they would not even discuss his plans (which would resolve the Tax and Wetland Issues) until the back taxes and court judgment were settled. The week prior another potential buyer called the building department to find out about my land for sale but was told that the Town had no record of my address and they could or would not look it up, therefore were unable to answer any questions about it.

I was hoping I might be able to preserve this land. However it will likely now have to be turned over to the developers. I am unconvinced that if the Town takes the property for the back taxes, that it won't just be turned over to developers anyway.

Please direct the town to release the previously signed and approved permits for Parcel I (3e-33) and provide time to sell the property and redeem the tax titles. There is no reason that this situation cannot be resolved with a little cooperation from the town.

I have been breeding and raising alpacas in Stow since 2008. In 2014 I brought some of my alpacas onto the current property on Maple Street, Stow and Teele Road, Bolton to graze and then slowly began maintaining and improving the "Land in Agricultural Use".

*Because activities performed for "normal maintenance or improvement of Land In Agricultural Use **or when they occur within the Buffer Zone or Bordering Land Subject to Flooding that is not land in agricultural use**" are exempt from the WPA (MA Wetlands Protection Act), which preempts the local bylaws, I did not think I required any permits to do so.*

<https://www.mass.gov/doc/310-cmr-1000-the-wetlands-protection-act/download>

In 2015, the Town of Stow brought me to District Court in Concord accusing me of damming up and diverting water ways. Something for which they provided no evidence. These charges were promptly dismissed.

In 2016 the Town of Bolton told me that according to the local bylaw I had only one lot, not the five that they had been taxing for the past 25 years, since the plan creating these lots was only recorded in Middlesex County. Bolton being in Worcester County, I simply recorded in Worcester, the same plan which had been signed by both Bolton and Stow 25 years earlier, thus resolving that issue.

Bolton had been taxing two of these lots as Buildable, yet over the course of 25 years had refused to issue the permits necessary to build, primarily because the variances had expired and the bylaw had been changed, it now requires all frontage to be in Bolton. The Town would not honor the variances originally issued by the town 25 years earlier as they had not been recorded in Worcester County. I brought this issue to the tax assessors and these two lots were then converted to and assessed as Unbuildable.

Realizing the taxes were still going to be an issue if I wished to farm this property long term, I decided to sell Parcel I (3e-33). I applied for and was granted the variance, required because a small portion of the contiguous frontage was in Stow not Bolton. The variance was approved, issued and recorded in Worcester County, along with my Declaration of Homestead (b56786 p165). With the issuance of the variance the lot was reclassified as Buildable and the taxes were increased. I then had Parcel I (3e-33) Perc tested and was working on the NOI (Notice of Intent) and Septic Plan. However a MA DEP (Department of Environmental Protection) declared drought stopped the documentation to refute the Perennial Stream Presumption and thus halted progress.

During 2017 the Stow Conservation Coordinator then took a temporary position in the same role in Bolton. She asserted that my Perc testing of Parcel I (3e-33) in Bolton was a violation of the WPA and local bylaw. Since Bolton's bylaw allowed the town to recoup court costs, expenses that Stow could not and was not willing to pay themselves, and DEP had declared a drought, both towns took the opportunity to bring suit in Superior Court. The charges this time were violations in the Buffer Zones and Riverfront Area, a presumption I was unable to refute at the time because of the drought. Claims were then made that the property was not in agricultural use. Stow began and continues to withhold the yearly animal counts made by the town animal inspector. Bolton never counted my animals. However both towns have and continue to issue Agricultural Burn Permits.

I was then as I am now unable to afford or otherwise acquire legal representation, so I attempted to defend myself. While the Towns were bringing suit against me, the Stow Town Clerk was able to disrupt the USPS (United States Postal Service) deliveries to my farm. I assumed I had responded properly to the Superior Court, however my notification from the court was returned NSN (No Such Number). This caused me to miss the hearing and my answer to the complaint and request for a new hearing were denied for failing to comply with Rule 9A. Because of the mail delivery issues, I only found this out after I was defaulted.

In 2018 I tried to comply with the Towns and the Superior Court Judgement by filing a NOI. However after Bolton approved the order of conditions for Parcel I (3e-33) the Town withheld this permit because of back taxes, thus preventing me from selling and being able to pay the back taxes and comply with the default court judgement.

Recently the conservation agents of both towns were somehow successful in blocking my state FCP (Forest Cutting Plan), preventing me from harvesting timber and thus paying what I owe and/or having the money necessary to otherwise work towards resolving these issues. The denial of my FCP was based on the Preliminary Injunction not the Final Default Judgment from the Superior Court that superseded it. My FCP & NOI which should have satisfied the court order was denied, thus preventing yet another opportunity for me to comply with the court order, and resolve the tax issues.

The Worcester Superior Court declared my violation to be "land clearing and erection of fencing and structures within 100 feet of Bordering Vegetated Wetlands and within 100 feet of a pond without an Order of Conditions"

*None of this is a violation in a **Wetland Resource Area** but instead only in the **Buffer Zone**.*

The Superior Court ORDERED that I "restore the wetland Resource Area and Buffer Zone at the Property in Accordance with the requirements of the Wetlands Protection Act and regulations and the Bolton and Stow Wetlands Bylaws".

Default Judgement Dec 2017 ActionNo 1785CV00789

As this legal action was undertaken during a MA DEP declared drought I was unable to refute the presumption of Perennial Streams until 2018 when RDAs (Requests for Determination of Applicability) filed with Bolton and Stow successfully refuted the presumption of the Riverfront Area and any prohibition of "New Agriculture" there in.

There are no Perennial Streams on the property and therefore no 200 foot Riverfront Area, as determined by the Conservation Commissions of Stow, Feb 6, 2018 and Bolton January 16, 2018. Wetland Delineation was accepted by the Town of Bolton for Parcel I (3e-33) in March 6, 2018 DEP File #0112-0660. The other areas to have been cut were never been in contention. The property is "In Active Agricultural Use". Forest, Field, Stream, and Pond are Actively Managed in the For-Profit pursuit of Breeding Alpacas, as acknowledged by both Towns with 2019 Agricultural Burn Permits.

This property was and is Presently and Primarily in Agricultural Use as witnessed by both towns continuing to issue Agricultural Permits for this property. All of the declared violations are allowed as "Improvements of Land in Agricultural Use" and are exempt from the WPA and Local Bylaws. Since there is no Riverfront Area on the premises there are not now nor have there ever been any violations of the WPA or local Bylaws, thereby complying with the ORDER to complete any and all required work within one year of the Default Judgment.

The already signed and approved Order of Conditions for Parcel I (3e-33), based on the NOI required by the Superior Court Order and thus fully compliant in all regards, should be released and the Septic Permit for Parcel I (3e-33) released upon approval, thus allowing me to sell Parcel I (3e-33) and pay all back taxes, money judgements and liens on the property when sold.

Please let me know when the town will release my permits so that I can sell my lot and pay what I owe.


Thanks so much for your attention to this issue.


Alan DiPietro
110 Teele Rd
Bolton MA 01740

978 333 4345

[Quoted text hidden]

2 attachments

 **LandCourtResponse.pdf**
850K

 **March_Letter.pdf**
41K

j <sunsunbrow@gmail.com>
To: Alan DiPietro <alandipietro@gmail.com>

Fri, Mar 13, 2020 at 6:54 PM

You have all your ducks in a row.
Good luck
Keep me posted.
[Quoted text hidden]

Gibbons, Robert B. <rgibbons@mirickoconnell.com>
To: Alan DiPietro <alandipietro@gmail.com>

Mon, Mar 16, 2020 at 8:50 AM

Mr. DiPietro,

What happened with the payment plan that was being discussed with the Town last year?

Regards,

Bob Gibbons

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Alan DiPietro <alandipietro@gmail.com>
To: "Gibbons, Robert B." <rgibbons@mirickoconnell.com>, david@coppolalaw.us
Cc: "Eldridge, James (SEN)" <James.Eldridge@masenate.gov>, "Hogan, Kate - Rep. (HOU)" <kate.hogan@mahouse.gov>, ago@state.ma.us
Bcc: "Bazin, John" <John.Bazin@nemoves.com>, Bryan Williamson <Bryanwilliamson451@gmail.com>, Kristin Kyzivat <kekyzivat@comcast.net>, Paul Kyzivat <pkyzivat@alum.mit.edu>, Sar

Good Morning Bob,

Thank you for responding. In regards to the payment plan that was offered to me: I was then as I am now unable to pay the down payment and would not have been able to stay current on it. I will not be able to do so until and unless, the already signed and approved Order of Conditions for Parcel I (3e-33), based on the NOI required by the Superior Court Order and thus fully compliant in all regards, should be released and the Septic Permit for Parcel I (3e-33) released upon approval, thus allowing me to sell Parcel I (3e-33) and pay all back taxes, money judgements and liens on the property when sold. I was in the processes of working with the town employees to resolve this issue, when per your March 14, 2019 letter, I was told to direct all questions to you,

I would still like to formally request that the Town of Bolton issue the already approved and signed Order of Conditions for Lot 3e-33 and allow the same for the upcoming Septic

Are the permits are being withheld per section 215-2 of the town by-law.

"The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority

If so it is not mandatory but at the discretion of the "licensing authority" to deny, revoke etc.

What is the process, and of whom do I request this?

Thank You for Your Assistance

Alan DiPietro
110 Teele Road
Bolton MA 01740
978 333 4345

On Mon, Mar 16, 2020 at 8:50 AM Gibbons, Robert B. <rgibbons@mirickoconnell.com> wrote:

Mr. DiPietro,

What happened with the payment plan that was being discussed with the Town last year?

Regards,

Bob Gibbons

From: Alan DiPietro <alandipietro@gmail.com>
Sent: Thursday, April 11, 2019 9:26 AM
To: Gibbons, Robert B. <rgibbons@mirickoconnell.com>
Cc: Child, Denise (DEP) <denise.child@state.ma.us>; Schmitz, Judith (DEP) <Judith.Schmitz@state.ma.us>
Subject: Re: Town of Bolton

This Message originated outside of Mirick O'Connell.

Good Morning Bob

Are these email reaching you?

The main question I would like you to answer is clearly administrative and not a request for legal advice.

I would like to formally request that the Town of Bolton issue the already approved and signed Order of Conditions for Lot 3e-33 and allow the same for the upcoming Septic

What is the process, and of whom do I request this?

If the permits are being withheld per section 215-2 of the town by-law,

"The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority

Then it is not mandatory but at the discretion of the "licensing authority" to deny, revoke etc.

Who is the "licensing authority" and what is the process to officially request that my permits be issued so I can sell and pay?

Exhibit J

CONTRACT TO PURCHASE REAL ESTATE #501

(With Contingencies)

(Binding Contract. If Legal Advice Is Desired, Consult An Attorney.)



From: BUYER(S):

To: OWNER OF RECORD ("SELLER"):

Name(s): Joseph Benziouanni, Erin Benziouanni
Address: 346 Maple St, Bellingham, MA 02019

Name(s): Alan DiPietro
Address: 201 Maple St, Stow, MA 01775

The BUYER offers to purchase the real property described as 110 Teele Rd, Bolton, MA 01740 together with all buildings and improvements thereon (the "Premises") to which I have been introduced by N/A upon the following terms and conditions:

- 1. Purchase Price: The BUYER agrees to pay the sum of \$ 220,000.00 to the SELLER for the purchase of the Premises, due as follows:
i. \$ 0 as a deposit to bind this Offer;
ii. \$ 3000 as an additional deposit upon executing the Purchase And Sale Agreement;
iii. Balance by bank's, cashier's, treasurer's or certified check or wire transfer at time for closing.
2. Duration Of Offer. This Offer is valid until a.m./p.m. on accepted or withdrawn by which time a copy of this Offer shall be signed by the SELLER, accepting this Offer and returned to the BUYER...
3. Purchase And Sale Agreement. The SELLER and the BUYER shall, on or before a.m./p.m. on 2 weeks execute the Standard Purchase and Sale Agreement...
4. Closing. The SELLER agrees to deliver a good and sufficient deed conveying good and clear record and marketable title at a.m./p.m. on Six Weeks at the County Registry of Deeds...
5. Escrow. The deposit shall be held by Seller's Attorney as escrow agent...
6. Contingencies. It is agreed that the BUYER'S obligations under this Offer and any Purchase and Sale Agreement signed pursuant to this Offer are expressly conditioned upon the following terms and conditions:
a. Mortgage. (Delete If Waived) The BUYER'S obligation to purchase is conditioned upon obtaining a written commitment for financing in the amount of \$ 220,000.00 at prevailing rates, terms and conditions by Five Weeks. The BUYER shall have an obligation to act reasonably diligently to satisfy any condition within the BUYER'S control...
b. Inspections. (Delete If Waived) The BUYER'S obligations under this agreement are subject to the right to obtain inspection(s) of the Premises or any aspect thereof, including, but not limited to, home, pest, radon, lead paint, septic/sewer, water quality, and water drainage by consultant(s) regularly in the business of



conducting said inspections, of BUYER'S own choosing, and at BUYER'S sole cost within _____ days after SELLER'S acceptance of this agreement. If the results are not satisfactory to BUYER, in BUYER'S sole discretion, BUYER shall have the right to give written notice received by the SELLER or SELLER'S agent by 5:00 p.m. on the calendar day after the date set forth above, terminating this agreement. Upon receipt of such notice this agreement shall be void and all monies deposited by the BUYER shall be returned. Failure to provide timely notice of termination shall constitute a waiver. In the event that the BUYER does not exercise the right to have such inspection(s) or to so terminate, the SELLER and the listing broker are each released from claims relating to the condition of the Premises that the BUYER or the BUYER'S consultants could reasonably have discovered.

7. Representations/Acknowledgments. The BUYER acknowledges receipt of an agency disclosure, lead paint disclosure (for residences built before 1978), Home Inspectors Facts For Consumers brochure (prepared by the Office of Consumer Affairs). The BUYER is not relying upon any representation, verbal or written, from any real estate broker or licensee concerning legal use. Any reference to the category (single family, multi-family, residential, commercial) or the use of this property in any advertisement or listing sheet, including the number of units, number of rooms or other classification is not a representation concerning legal use or compliance with zoning by-laws, building code, sanitary code or other public or private restrictions by the broker. The BUYER understands that if this information is important to BUYER, it is the duty of the BUYER to seek advice from an attorney or written confirmation from the municipality. In addition, the BUYER acknowledges that there are no warranties or representations on which BUYER relies in making this Offer, except those previously made in writing and the following : (if none, write "NONE"): None

8. Buyer's Default. If the BUYER defaults in BUYER'S obligations, all monies tendered as a deposit shall be paid to the SELLER as liquidated damages and this shall be SELLER'S sole remedy.

9. Additional Terms. See Attached,

[Signature] _____ 9/15/19 _____ [Signature] _____ 8/5/19
BUYER Date BUYER Date

SELLER'S REPLY

SELLER(S): (check one and sign below)
 (a) ACCEPT(S) the Offer as set forth above at _____ a.m./p.m. on this _____ day of _____.
 (b) REJECT(S) the Offer.
 (c) Reject(s) the Offer and MAKE(S) A COUNTEROFFER on the following terms: _____

This Counteroffer shall expire at _____ a.m./p.m. on _____ if not withdrawn earlier.

SELLER or spouse _____ Date SELLER _____ Date

(IF COUNTEROFFER FROM SELLER) BUYER'S REPLY

BUYER(S): (check one and sign below)
 (a) ACCEPT(S) the Counteroffer as set forth above at _____ a.m./p.m. on this _____ day of _____.
 (b) REJECT(S) the Counteroffer.

BUYER _____ Date BUYER _____ Date

RECEIPT FOR DEPOSIT

I hereby acknowledge receipt of a deposit in the amount of \$ _____ from the BUYER this _____ day of _____.



9. Additional Terms

-Subject to seller acquiring final septic and well approval by Bolton on or before mortgage contingency.

-Seller shall have a right of first refusal until such time as a certificate of occupancy is established. Before buyer may sell the property to a third-party, buyer shall first offer the property to seller on the same terms and conditions as are offered by the third party. Seller shall have 48 hours during which to accept said offer. If seller does not accept said offer within said period, buyer shall be free to accept the third-party offer.

-While the buyer owns the property, seller may continue to access the undevelopable portion of the land behind the dry stream bed for use of alpaca grazing. This agreement will not transfer to future owners of either property.

Exhibit K

CONTRACT TO PURCHASE REAL ESTATE #501 (Page 1 of 2)



MASSACHUSETTS
ASSOCIATION OF REALTORS®

(With Contingencies)

(Binding Contract. If Legal Advice Is Desired, Consult An Attorney.)

From: BUYER(S):

To: OWNER OF RECORD ("SELLER"):

Name(s): Waterford Construction

Name(s) Owner of Record

Address: 169 DW Highway
Nashua NH 03060

Address:

The agent Lynda Wilkes

is operating in this transaction as:

Buyer's Agent Seller's Agent Facilitator Dual Agent

This provision does not eliminate the requirement to have a signed Mandatory Real Estate Licensee-Consumer Relationship. It acts to satisfy Standard of Practice 16-10 in the REALTOR® Code of Ethics.

The BUYER offers to purchase the real property described as 110 Teel Rd Bolton Ma 01740 4.05 acre lot

together with all buildings and improvements thereon (the "Premises") to which I have been introduced by Lynda Wilkes
RE/MAX Innovative Properties upon the following terms and conditions:

1. Purchase Price: The BUYER agrees to pay the sum of \$229,900 to the SELLER for the purchase of the Premises (the "Offer"), due as follows:

- i. \$10,000 as a deposit to bind this Offer
 - and delivered herewith to the Seller or Seller's agent
 - or to be delivered forthwith upon receipt of written acceptance
- ii. \$0 as an additional deposit upon executing the Purchase And Sale Agreement;
- iii. Balance by bank's, cashier's, treasurer's or certified check or wire transfer at time for closing.

2. Duration Of Offer. This Offer is valid until 12:00 a.m. / p.m. on 03/05/2021 by which time a copy of this Offer shall be signed by the SELLER, accepting this Offer and returned to the BUYER, otherwise this Offer shall be deemed rejected and the money tendered herewith shall be returned to the BUYER. Upon written notice to the BUYER or BUYER'S agent of the SELLER'S acceptance, the accepted Offer shall form a binding agreement. Time is of the essence as to each provision.

3. Purchase And Sale Agreement. The SELLER and the BUYER shall, on or before 5:00 a.m. / p.m. on 03/11/2021 execute the Standard Purchase and Sale Agreement of the MASSACHUSETTS ASSOCIATION OF REALTORS® or substantial equivalent which, when executed, shall become the entire agreement between the parties and this Offer shall have no further force and effect.

4. Closing. The SELLER agrees to deliver a good and sufficient deed conveying good and clear record and marketable title at 12:00 a.m. / p.m. on 2 weeks after building permit at the TBD County Registry of Deeds or such other time or place as may be mutually agreed upon by the parties.

5. Escrow. The deposit shall be held by Real Estate Marketplace, as escrow agent, subject to the terms hereof. Endorsement or negotiation of this deposit by the real estate broker shall not be deemed acceptance of the terms of the Offer. In the event of any disagreement between the parties concerning to whom escrowed funds should be paid, the escrow agent may retain said deposit pending written instructions mutually given by the BUYER and SELLER. The escrow agent shall abide by any Court decision concerning to whom the funds shall be paid and shall not be made a party to a pending lawsuit solely as a result of holding escrowed funds. Should the escrow agent be made a party in violation of this paragraph, the escrow agent shall be dismissed and the party asserting a claim against the escrow agent shall pay the agent's reasonable attorneys' fees and costs.

6. Contingencies. It is agreed that the BUYER'S obligations under this Offer and any Purchase and Sale Agreement signed pursuant to this Offer are expressly conditioned upon the following terms and conditions:

a. Mortgage. (Delete If Waived) The BUYER'S obligation to purchase is conditioned upon obtaining a written commitment for financing in the amount of \$N/A at prevailing rates, terms and conditions by . The BUYER shall have an obligation to act reasonably diligently to satisfy any condition within the BUYER'S control. If, despite reasonable efforts, the BUYER has been unable to obtain such written commitment the BUYER may terminate this agreement by giving written notice that is received by 5:00 p.m. on the calendar day after the date set forth above. In the event that notice has not been received, this condition is deemed waived. In the event that due notice has been received, the obligations of the parties shall cease and this agreement shall be void; and all monies deposited by the BUYER shall be returned. In no event shall the BUYER be deemed to have used reasonable efforts to obtain financing unless the BUYER has submitted one application by and acted reasonably promptly in providing additional information requested by the mortgage lender.



CONTRACT TO PURCHASE REAL ESTATE #501 (Page 2 of 2)
(With Contingencies)



b. Inspections. (Delete If Waived) The BUYER'S obligations under this agreement are subject to the right to obtain inspection(s) of the Premises or any aspect thereof, including, but not limited to, home, pest, radon, lead paint, energy usage/efficiency, septic/sewer, water quality, and water drainage by consultant(s) regularly in the business of conducting said inspections, of BUYER'S own choosing, and at BUYER'S sole cost by N/A If the results are not satisfactory to BUYER, in BUYER'S sole discretion, BUYER shall have the right to give written notice received by the SELLER or SELLER'S agent by 5:00 p.m. on the calendar day after the date set forth above, terminating this agreement. Upon receipt of such notice this agreement shall be void and all monies deposited by the BUYER shall be returned. Failure to provide timely notice of termination shall constitute a waiver. In the event that the BUYER does not exercise the right to have such inspection(s) or to so terminate, the SELLER and the listing broker are each released from claims relating to the condition of the Premises that the BUYER or the BUYER'S consultants could reasonably have discovered.

7. Representations/Acknowledgments. The BUYER acknowledges receipt of an agency disclosure, lead paint disclosure (for residences built before 1978), and Home Inspectors Facts For Consumers brochure (prepared by the Office of Consumer Affairs). The BUYER is not relying upon any representation, verbal or written, from any real estate broker or licensee concerning legal use. Any reference to the category (single family, multi-family, residential, commercial) or the use of this property in any advertisement or listing sheet, including the number of units, number of rooms or other classification is not a representation concerning legal use or compliance with zoning by-laws, building code, sanitary code or other public or private restrictions by the broker. The BUYER understands that if this information is important to BUYER, it is the duty of the BUYER to seek advice from an attorney or written confirmation from the municipality. In addition, the BUYER acknowledges that there are no warranties or representations made by the SELLER or any broker on which BUYER relies in making this Offer, except those previously made in writing and the following: (if none, write "NONE"):

NONE

8. Buyer's Default. If the BUYER defaults in BUYER'S obligations, all monies tendered as a deposit shall be paid to the SELLER as liquidated damages and this shall be SELLER'S sole remedy.

9. Additional Terms.

Seller to provide septic design and order of conditions.
Closing 2 weeks after receiving building permit.

Waterford Construction, LLC dotloop verified 03/04/21 11:11 AM EST 7X4M-KLWP-6EGH-DZIK BUYER BUYER

SELLER'S REPLY

SELLER(S): (check one and sign below)

- (a) ACCEPT(S) the Offer as set forth above at _____ a.m. / p.m. on this _____ day of _____.
- (b) REJECT(S) the Offer.
- (c) Reject(s) the Offer and MAKE(S) A COUNTEROFFER on the following terms:

This Counteroffer shall expire at _____ a.m. / p.m. on _____ if not withdrawn earlier.

SELLER or spouse SELLER

(IF COUNTEROFFER FROM SELLER) BUYER'S REPLY

The BUYER: (check one and sign below)

- (a) ACCEPT(S) the Counteroffer as set forth above at _____ a.m. / p.m. on _____ day of _____.
- (b) REJECT(S) the Counteroffer.

BUYER BUYER

RECEIPT FOR DEPOSIT

I hereby acknowledge receipt of a deposit in the amount of \$ _____ from the BUYER this _____ day of _____.

Escrow Agent or Authorized Representative



TYPES OF AGENCY REPRESENTATION

SELLER'S AGENT

A seller can engage the services of a real estate licensee to act as the seller's agent in the sale of the seller's property. This means that the real estate agent represents the seller, who is a client. The agent owes the seller client undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put the seller's interests first and attempt to negotiate price and terms acceptable to their seller client. The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions.

BUYER'S AGENT

A buyer can engage the services of a real estate licensee to act as the buyer's agent in the purchase of a property. This means that the real estate agent represents the buyer, who is a client. The agent owes the buyer client undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put the buyer's interests first and attempt to negotiate price and terms acceptable to their buyer client. The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions.

(NON-AGENT) FACILITATOR

When a real estate licensee works as a facilitator that licensee assists the seller and/or buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated, owe the seller and buyer a duty to present all real property honestly and accurately by disclosing known material defects and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. Should the seller and/or buyer expressly agree, a facilitator relationship can be changed to a seller or buyer client relationship with the written agreement of the person so represented.

DESIGNATED SELLER'S AND BUYER'S AGENT

A real estate licensee can be designated by another real estate licensee (the appointing or designating agent) to represent a buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate licensee once so designated is then the agent for that buyer or seller who becomes the agent's client. The designated agent owes the buyer client or seller client, undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put their client's interests first, and attempt to negotiate price and terms acceptable to their client. No other licensees affiliated with the same firm represent the client unless otherwise agreed upon by the client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer in the same transaction, then the appointing agent becomes a dual agent. Consequently, a dual agent cannot fully satisfy the duties of loyalty, full disclosure, obedience to lawful instructions, which is required of a seller or buyer agent. Only your designated agent represents your interests. Written consent for designated agency must be provided before a potential transaction is identified, but in any event, no later than prior to the execution of a written agreement for purchase or sale of residential property. The consent must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample consent to designated agency is available at the Board's website at www.mass.gov/dpl/re.

DUAL AGENT

A real estate licensee may act as a dual agent representing both the seller and the buyer in a transaction but only with the express and informed written consent of both the seller and the buyer. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently, a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions, which is required of a seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. Written consent for dual agency must be provided before a potential transaction is identified, but in any event, no later than prior to the execution of a written agreement for purchase or sale of residential property. The consent must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample consent to dual agency is available at the Board's website at www.mass.gov/dpl/re.

Last Revised: January 24, 2017

Exhibit L

CONTRACT TO PURCHASE REAL ESTATE #501 (Page 1 of 2)



(With Contingencies)

(Binding Contract. If Legal Advice Is Desired, Consult An Attorney.)

From: BUYER(S):
 Name(s): Jason R. & Karalyn M. Killough
 Address:

To: OWNER OF RECORD ("SELLER"):
 Name(s): Alan DiPietro
 Address: 110 Teele Rd.
Bolton, MA 01740

The agent Carolyn Fisher is operating in this transaction as:

- Buyer's Agent
- Seller's Agent
- Facilitator
- Dual Agent

on behalf of Jason and Karalyn Killough

This provision does not eliminate the requirement to have a signed Mandatory Real Estate Licensee-Consumer Relationship Disclosure, but acts to satisfy Standard of Practice 16-10 in the REALTOR® Code of Ethics.

The BUYER offers to purchase the real property described as 110 Teele Rd, Bolton, MA 01740 MLS#72788258
+-. 4.05 acres together with all buildings and improvements thereon (the "Premises")
 to which I have been introduced by Fisher & Associates and Real Estate Marketplace upon the following terms and conditions:

1. Purchase Price: The BUYER agrees to pay the sum of \$210,000.00 to the SELLER for the purchase of the Premises (the "Offer"), due as follows:

- i. \$ 1,000.00 as a deposit to bind this Offer
 - and delivered herewith to the Seller or Seller's agent
 - or to be delivered forthwith upon receipt of written acceptance
- ii. \$ 9,500.00 as an additional deposit upon executing the Purchase And Sale Agreement;
- iii. Balance by bank's, cashier's, treasurer's or certified check or wire transfer at time for closing.

2. Duration Of Offer. This Offer is valid until 08:00 a.m./p.m. on 05/09/2021 by which time a copy of this Offer shall be signed by the SELLER, accepting this Offer and returned to the BUYER, otherwise this Offer shall be deemed rejected and the money tendered herewith shall be returned to the BUYER. Upon written notice to the BUYER or BUYER'S agent of the SELLER'S acceptance, the accepted Offer shall form a binding agreement. Time is of the essence as to each provision.

3. PurchaseAndSaleAgreement. TheSELLERandtheBUYERshall, onorbefore 08:00 a.m./p.m.on*see addendum execute the Standard Purchase and Sale Agreement of the MASSACHUSETTS ASSOCIATION OF REALTORS® or substantial equivalent which, when executed, shall become the entire agreement between the parties and this Offer shall have no further force and effect.

4. Closing. The SELLER agrees to deliver a good and sufficient deed conveying good and clear record and marketable title at 12:00 a.m./p.m. on on or before July 29,2021 at the Middlesex County Registry of Deeds or such other time or place as may be mutually agreed upon by the parties.

5. Escrow. The deposit shall be held by Real Estate Marketplace, as escrow agent, subject to the terms hereof. Endorsement or negotiation of this deposit by the real estate broker shall not be deemed acceptance of the terms of the Offer. In the event of any disagreement between the parties concerning to whom escrowed funds should be paid, the escrow agent may retain said deposit pending written instructions mutually given by the BUYER and SELLER. The escrow agent shall abide by any Court decision concerning to whom the funds shall be paid and shall not be made a party to a pending lawsuit solely as a result of holding escrowed funds. Should the escrow agent be made a party in violation of this paragraph, the escrow agent shall be dismissed and the party asserting a claim against the escrow agent shall pay the agent's reasonable attorneys' fees and costs.

6. Contingencies. It is agreed that the BUYER'S obligations under this Offer and any Purchase and Sale Agreement signed pursuant to this Offer are expressly conditioned upon the following terms and conditions:

a. Mortgage. (Delete If Waived) The BUYER'S obligation to purchase is conditioned upon obtaining a written commitment for financing in the amount of \$ 80% of full build price at prevailing rates, terms and conditions by *see addendum

. The BUYER shall have an obligation to act reasonably diligently to satisfy any condition within the BUYER'S control. If, despite reasonable efforts, the BUYER has been unable to obtain such written commitment the BUYER may terminate this agreement by giving written notice that is received by 5:00 p.m. on the calendar day after the date set forth above. In the event that notice has not been received, this condition is deemed waived. In the event that due notice has been received, the obligations of the parties shall cease and this agreement shall be void; and all monies deposited by the BUYER shall be returned. In no event shall the BUYER be deemed to have used

CONTRACT TO PURCHASE REAL ESTATE #501 (Page 2 of 2)
(With Contingencies)



reasonable efforts to obtain financing unless the BUYER has submitted one application by *see addendum _____ and acted reasonably promptly in providing additional information requested by the mortgage lender.

b. Inspections. (Delete If Waived) The BUYER'S obligations under this agreement are subject to the right to obtain inspection(s) of the Premises or any aspect thereof, including, but not limited to, home, pest, radon, lead paint, energy usage/efficiency, septic/sewer, water quality, and water drainage by consultant(s) regularly in the business of conducting said inspections, of BUYER'S own choosing, and at BUYER'S sole cost by see attached addendum _____. If the results are not satisfactory to BUYER, in BUYER'S sole discretion, BUYER shall have the right to give written notice received by the SELLER or SELLER'S agent by 5:00 p.m. on the calendar day after the date set forth above, terminating this agreement. Upon receipt of such notice this agreement shall be void and all monies deposited by the BUYER shall be returned. Failure to provide timely notice of termination shall constitute a waiver. In the event that the BUYER does not exercise the right to have such inspection(s) or to so terminate, the SELLER and the listing broker are each released from claims relating to the condition of the Premises that the BUYER or the BUYER'S consultants could reasonably have discovered.

7. Representations/Acknowledgments. The BUYER acknowledges receipt of an agency disclosure, lead paint disclosure (for residences built before 1978) and Home Inspectors Facts For Consumers brochure (prepared by the Office of Consumer Affairs). The BUYER is not relying upon any representation, verbal or written, from any real estate broker or licensee concerning legal use. Any reference to the category (single family, multi-family, residential, commercial) or the use of this property in any advertisement or listing sheet, including the number of units, number of rooms or other classification is not a representation concerning legal use or compliance with zoning by-laws, building code, sanitary code or other public or private restrictions by the broker. The BUYER understands that if this information is important to BUYER, it is the duty of the BUYER to seek advice from an attorney or written confirmation from the municipality. In addition, the BUYER acknowledges that there are no warranties or representations made by the SELLER or any broker on which BUYER relies in making this Offer, except those previously made in writing and the following: (if none, write "NONE"):

none

8. Buyer's Default. If the BUYER defaults in BUYER'S obligations, all monies tendered as a deposit shall be paid to the SELLER as liquidated damages and this shall be SELLER'S sole remedy.

9. Additional Terms.
See attached addendum. Seller to provide copy of existing perc tests and septic plan.

<i>Jason R. Kellough</i>	dotloop verified 05/08/21 10:35 AM EDT EXC3-WKSH-QNM4-DRQ1	<i>Kerilyn M. Kellough</i>	dotloop verified 05/08/21 10:22 AM EDT
BUYER	Date	BUYER	Date

SELLER'S REPLY

SELLER(S): (check one and sign below)

- (a) ACCEPT(S) the Offer as set forth above at _____ a.m./p.m. on this _____ day of _____.
- (b) REJECT(S) the Offer.
- (c) Reject(s) the Offer and MAKE(S) A COUNTEROFFER on the following terms:

This Counteroffer shall expire at _____ a.m./p.m. on _____ if not withdrawn earlier.

SELLER, or spouse	Date	SELLER	Date
-------------------	------	--------	------

(IF COUNTEROFFER FROM SELLER) BUYER'S REPLY

The BUYER: (check one and sign below):

- (a) ACCEPT(S) the Counteroffer as set forth above at _____ a.m./p.m. on this _____ day of _____.
- (b) REJECT(S) the Counteroffer.

BUYER	Date	BUYER	Date
-------	------	-------	------

RECEIPT FOR DEPOSIT

I hereby acknowledge receipt of a deposit in the amount of \$ _____ from the BUYER this _____ day of _____


_____ Escrow Agent or Authorized Representative



110 Teele Rd. Bolton
Offer Addendum

1. The Buyer has thirty (30) calendar days from the date of an accepted offer to pursue due diligence related to, but not limited to, engineering and soil testing in preparation for building on the Property.
2. If following this initial 30-day period the Buyer is unsatisfied with the results of said due diligence, the Buyer has the option to revoke this offer and the accompanying deposit will be returned to them by the Seller without recourse.
3. If the Buyer is satisfied with the results of said due diligence, the Buyer will enter into a purchase and sale agreement with the Seller within ten (10) calendar days following the expiration of the initial thirty (30) day due diligence period.
4. Said purchase and sale agreement shall contain language providing the Buyer with sixty (60) calendar days to obtain permits. At the expiration of this 60-day period, the Buyer may elect to a) close on the Property within twenty (20) calendar days, b) extend the deadline for obtaining permits for another thirty (30) calendar days, or c) withdraw its interest in purchasing the Property, at which time all deposits will be returned to the Buyer by the Seller without recourse.
5. If the Buyer is unable to obtain permits at the expiration of the 30-day extension period referenced in paragraph #4 (above), then the Buyer may elect to withdraw its interest in purchasing the Property, at which time all deposits will be returned to the Buyer by the Seller without recourse.

Buyer:  
dotloop verified
05/08/21 10:35 AM
EDT
ZISG-DPBQ-MY9E-JHJV

Buyer:  
dotloop verified
05/08/21 10:22 AM EDT
NQJD-MSER-NHNV-DHP8

Seller: _____

Seller: _____

Salem Five

MORTGAGE

May 8, 2021

Jason and Kara Killough
24 Acton Rd.
Stow, MA 01775

Dear Jason and Kara,

Congratulations! Please accept this letter as evidence of your qualification for the purchase of the property located at 110 Teele Rd, Bolton for the price of \$210,000 with a corresponding build of new home with finance of 80% of total acquisition cost.

Your qualification for the conventional mortgage financing of the aforementioned property is based on your submission of a preliminary application. This preapproval is contingent upon the sale of 24 Acton Rd, Stow.

While this letter is not to be construed as a final mortgage commitment, it can and should be viewed as reasonable evidence of your ability to qualify for the purchase, and as evidence of our having verified your credit history, income and assets. Final mortgage commitment is contingent upon completion of a mortgage application specific to the subject property, our acceptable receipt and review of a fully executed Purchase and Sale Agreement, acceptable appraisal, acceptable condo docs and eligibility, as well as satisfaction of any conditions set-forth upon final underwriter review.

We are looking forward to making your mortgage loan. Please do not hesitate to call me with any questions. Thank you.

Sincerely,

Edward Barrett

Edward Barrett
Vice President, Residential Lending
Salem Five
508-654-4656
Edward.Barrett@SalemFive.com

210 Essex Street, Salem, MA 01970 • salemfive.com
Telephone 800.850.5000 and 978.745.5555



Commonwealth of Massachusetts

BOARD OF REGISTRATION OF REAL ESTATE BROKERS AND SALESPERSONS

www.mass.gov/dpl/boards/re

MASSACHUSETTS MANDATORY REAL ESTATE LICENSEE-CONSUMER RELATIONSHIP DISCLOSURE THIS IS NOT A CONTRACT

This disclosure is provided to you, the consumer, by the real estate licensee listed in this disclosure.

THE TIME WHEN THE REAL ESTATE LICENSEE MUST PROVIDE THIS NOTICE TO THE CONSUMER:

All real estate licensees must present this form to you at the first personal meeting with you to discuss a specific property. In the event this relationship changes, an additional disclosure must be provided and completed at that time.

CONSUMER INFORMATION AND RESPONSIBILITY:

If you are a buyer or seller, you can engage a real estate licensee to provide advice, assistance and representation to you as your agent. The real estate licensee can represent you as the seller (Seller's Agent) or represent you as the buyer (Buyer's Agent), or can assist you as a Facilitator.

All real estate licensees, regardless of the working relationship with a consumer must, by law, present properties honestly and accurately, and disclose known material defects in the real estate.

The duties of a real estate licensee do not relieve consumers of the responsibility to protect their own interests. If you need advice for legal, tax, insurance, zoning, permitted use, or land survey matters, it is your responsibility to consult a professional in those areas. Real estate licensees do not and cannot perform home, lead paint, or insect inspections, nor do they perform septic system, wetlands or environmental evaluations.

Do not assume that a real estate licensee works solely for you unless you have an agreement for that relationship.

For more detailed definitions and descriptions about real estate relationships, please see page 2 of this disclosure.

THE SELLER OR BUYER RECEIVING THIS DISCLOSURE IS HEREBY ADVISED THAT THE REAL ESTATE LICENSEE NAMED BELOW IS WORKING AS A:

Check one: Seller's agent Buyer's agent Facilitator

If seller's or buyer's agent is checked above, the real estate licensee must complete the following section:

Check one: Non-Designated Agency

The real estate firm or business listed below and all other affiliated agents are also working as the agent of the Seller Buyer

Designated Agency

Only the licensee named herein represents the Seller Buyer (designated seller agency or designated buyer agency). In this situation any other agents affiliated with the firm or business listed below do not represent you and may represent another party in your real estate transaction.

By signing below, I, the real estate licensee, acknowledge that this disclosure has been provided to the consumer named herein:

Carolyn Fisher <small>dotloop verified 05/08/21 9:30 AM EDT KCH2-E8KJ-TP1C-1HMR</small> Signature of Real Estate Licensee	Carolyn Fisher <small>Printed Name of Real Estate Licensee</small>	9535571 <small>License #</small>	<input type="checkbox"/> Broker <input checked="" type="checkbox"/> Salesperson	05/08/2021 <small>Today's Date</small>
Fisher & Associates <small>Name of Real Estate Brokerage Firm</small>		9072240 <small>Brokerage Firm Real Estate License #</small>		
Jason R. Killough <small>dotloop verified 05/08/21 10:35 AM EDT PWIK-LMVR-KS7M-XVOZ</small> Signature of Consumer	Jason R. Killough <small>Printed Name of Consumer</small>	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller	05/08/2021 <small>Today's Date</small>	
Karalyn M. Killough <small>dotloop verified 05/08/21 10:22 AM EDT GLEE-NUM7-Y9RZ-R0SP</small> Signature of Consumer	Karalyn M. Killough <small>Printed Name of Consumer</small>	<input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller	05/08/2021 <small>Today's Date</small>	

Check here if the consumer declines to sign this notice.

Last Revised: January 24, 2017



MASSACHUSETTS
ASSOCIATION OF REALTORS®



Form 705

TYPES OF AGENCY REPRESENTATION

SELLER'S AGENT

A seller can engage the services of a real estate licensee to act as the seller's agent in the sale of the seller's property. This means that the real estate agent represents the seller, who is a client. The agent owes the seller client undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put the seller's interests first and attempt to negotiate price and terms acceptable to their seller client. The seller may authorize sub-agents to represent him/her in marketing its property to buyers, however the seller should be aware that wrongful action by the real estate agent or sub-agents may subject the seller to legal liability for those wrongful actions.

BUYER'S AGENT

A buyer can engage the services of a real estate licensee to act as the buyer's agent in the purchase of a property. This means that the real estate agent represents the buyer, who is a client. The agent owes the buyer client undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put the buyer's interests first and attempt to negotiate price and terms acceptable to their buyer client. The buyer may also authorize sub-agents to represent him/her in purchasing property, however the buyer should be aware that wrongful action by the real estate agent or sub-agents may subject the buyer to legal liability for those wrongful actions.

(NON-AGENT) FACILITATOR

When a real estate licensee works as a facilitator that licensee assists the seller and/or buyer in reaching an agreement but does not represent either the seller or buyer in the transaction. The facilitator and the broker with whom the facilitator is affiliated, owe the seller and buyer a duty to present all real property honestly and accurately by disclosing known material defects and owe a duty to account for funds. Unless otherwise agreed, the facilitator has no duty to keep information received from a seller or buyer confidential. Should the seller and/or buyer expressly agree, a facilitator relationship can be changed to a seller or buyer client relationship with the written agreement of the person so represented.

DESIGNATED SELLER'S AND BUYER'S AGENT

A real estate licensee can be designated by another real estate licensee (the appointing or designating agent) to represent a buyer or seller, provided the buyer or seller expressly agrees to such designation. The real estate licensee once so designated is then the agent for that buyer or seller who becomes the agent's client. The designated agent owes the buyer client or seller client, undivided loyalty, reasonable care, disclosure, obedience to lawful instruction, confidentiality and accounting. The agent must put their client's interests first, and attempt to negotiate price and terms acceptable to their client. No other licensees affiliated with the same firm represent the client unless otherwise agreed upon by the client. In situations where the appointing agent designates another agent to represent the seller and an agent to represent the buyer in the same transaction, then the appointing agent becomes a dual agent. Consequently, a dual agent cannot fully satisfy the duties of loyalty, full disclosure, obedience to lawful instructions, which is required of a seller or buyer agent. Only your designated agent represents your interests. Written consent for designated agency must be provided before a potential transaction is identified, but in any event, no later than prior to the execution of a written agreement for purchase or sale of residential property. The consent must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample consent to designated agency is available at the Board's website at www.mass.gov/dpl/re.

DUAL AGENT

A real estate licensee may act as a dual agent representing both the seller and the buyer in a transaction but only with the express and informed written consent of both the seller and the buyer. A dual agent shall be neutral with regard to any conflicting interest of the seller and buyer. Consequently, a dual agent cannot satisfy fully the duties of loyalty, full disclosure, obedience to lawful instructions, which is required of a seller or buyer agent. A dual agent does, however, still owe a duty of confidentiality of material information and accounting for funds. Written consent for dual agency must be provided before a potential transaction is identified, but in any event, no later than prior to the execution of a written agreement for purchase or sale of residential property. The consent must contain the information provided for in the regulations of the Massachusetts Board of Registration of Real Estate Brokers and Salespeople (Board). A sample consent to dual agency is available at the Board's website at www.mass.gov/dpl/re.

Last Revised: January 24, 2017



MLS # 72788258 - Active

Land - Residential

**110 Teele
Bolton, MA 01740
Worcester County**

List Price: **\$229,900**

Grade School:
High School:

Middle School:

Directions: **See alpaca farm on left. This lot is just before that parcel across from a home.**

Remarks

Pandemic forces sale. Owners misfortune is now your good fortune which welcomes you to the town of Bolton. A beautiful lot that can host a large 4 bedroom home with garage. Driveway to be built set back off this country road. Perced, septic design available, well location marked. Build you dream home on the most affordable lot in Bolton. Owner and broker happy to walk the land with you and show you the plans. An additional 30 acres abutting this lot are also available. See additional listing in Stow

Property Information

Total Approx. Acres: **4.05 (176,515 Sq. Ft.)**

Cultivation Acres:

Home Own Assn:

No. of Approved Lots:

Pasture Acres:

Assn Req:

Approx. Street Frontage:

Timber Acres:

HOA Fee:

Disclosures: **Buildable lot subject to plan approval**

Features

Beach: **Yes**
Beach - Miles to: **1/2 to 1 Mile**
Cable Available:
Documents: **Septic Design**
Electric: **At Street**
Gas: **Other (See Remarks)**
Land Description: **Level, Wetlands, Wooded**
Road Type: **Public**
Sewer Utilities: **Private**
Water Utilities: **Private**
Waterfront: **No**
Water View: **No**
Zone Usage: **Single Family**

Other Property Info

Adult Community: **No**
DEQE/DEP#:
Disclosure Declaration: **No**
Perc Test: **Yes** Date: **9/11/2020**
Short Sale w/Lndr.App.Req: **No**
Lender Owned: **No**

Tax Information

Pin #: **3E-33**
Assessed: **\$177,200**
Tax: **\$3,696** Tax Year: **2020**
Book: **00** Page: **00**
Cert:
Zoning Code: **Residentia**
Map: Block: Lot:

Office/Agent Information

Listing Office: **Real Estate Marketplace (508) 303-8000 Ext. 11**
Listing Agent: **Randy Carpenter (508) 303-8000**
Team Member(s):
Sale Office:
Sale Agent:
Listing Agreement Type: **Exclusive Right to Sell**
Entry Only: **No**
Showing: Sub-Agent: **Sub-Agency Relationship Not Offered**
Showing: Buyer-Agent: **Call List Agent, Accompanied Showings**
Showing: Facilitator: **Call List Agent, Accompanied Showings**
Special Showing Instructions: **Broker and Owner will walk the land with you**

Compensation

Sub-Agent: **Not Offered**
Buyer Agent: **2.5**
Facilitator: **2.5**
Compensation Based On: **Net Sale Price**

Market Information

Listing Date: **2/21/2021**
Days on Market: Property has been on the market for a total of **48** day(s)
Expiration Date:
Original Price: **\$229,900**
Off Market Date:
Sale Date:

Listing Market Time: MLS# has been on for **48** day(s)
Office Market Time: Office has listed this property for **48** day(s)
Cash Paid for Upgrades:
Seller Concessions at Closing:

JASON KILLOUGH
KARALYN KILLOUGH
24 SOUTH ACTON ROAD
STOW, MA 01775

97-311/1240

1843

DATE 5-8-2021

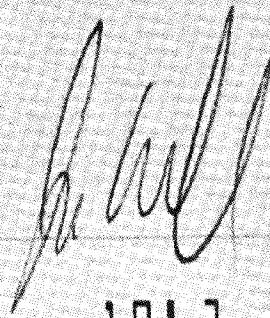
PAY TO THE ORDER OF Real Estate Marketplace \$ 1000.00

One thousand and $\frac{00}{100}$ DOLLARS  Security Features Included. Details on Back.

ally BANK.

Escrow for
110 Teele Rd

MEMO



MP

1843

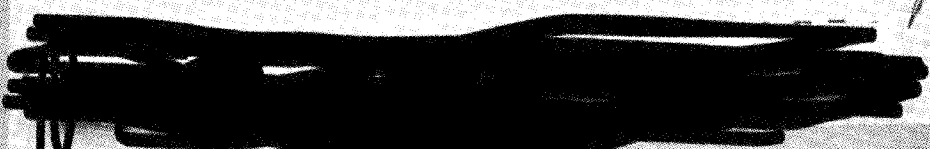


Exhibit M

CONTRACT TO PURCHASE REAL ESTATE #501 (Page 1 of 2)



MASSACHUSETTS
ASSOCIATION OF REALTORS®

(With Contingencies)

(Binding Contract. If Legal Advice Is Desired, Consult An Attorney.)

From: BUYER(S):

To: OWNER OF RECORD ("SELLER"):

Name(s): Jeffrey S. Socha

Name(s): Alan DiPietro

Address: 108 Warren Street
Boylston, MA 01505

Address: 201 Maple Street
Stow, MA

The agent Cynthia Walsh MacKenzie is operating in this transaction as:

Buyer's Agent Seller's Agent Facilitator Dual Agent

This provision does not eliminate the requirement to have a signed Mandatory Real Estate Licensee-Consumer Relationship. It acts to satisfy Standard of Practice 16-10 in the REALTOR® Code of Ethics.

The BUYER offers to purchase the real property described as The Land situated along Maple Street, Stow, MA and Teele St Bolton, MA as referenced in Book 52462 Pg 364 in Worcester County and Book 63791 Page 118 in Middlesex County. Parcels 2-5 together with all buildings and improvements thereon (the "Premises") to which I have been introduced by Cynthia Walsh MacKenzie of Walsh and Associates Real Estate upon the following terms and conditions:

1. Purchase Price: The BUYER agrees to pay the sum of \$ 510,000 to the SELLER for the purchase of the Premises (the "Offer"), due as follows:

- i. \$ 2,000 as a deposit to bind this Offer
 and delivered herewith to the Seller or Seller's agent
 or to be delivered forthwith upon receipt of written acceptance
- ii. \$ 20,000 as an additional deposit upon executing the Purchase And Sale Agreement;
- iii. Balance by bank's, cashier's, treasurer's or certified check or wire transfer at time for closing.

2. Duration Of Offer. This Offer is valid until 6:00 a.m. / p.m. on 03/09/2021 by which time a copy of this Offer shall be signed by the SELLER, accepting this Offer and returned to the BUYER, otherwise this Offer shall be deemed rejected and the money tendered herewith shall be returned to the BUYER. Upon written notice to the BUYER or BUYER'S agent of the SELLER'S acceptance, the accepted Offer shall form a binding agreement. Time is of the essence as to each provision.

3. Purchase And Sale Agreement. The SELLER and the BUYER shall, on or before 5:00 a.m. / p.m. on 04/05/2021 execute the Standard Purchase and Sale Agreement of the MASSACHUSETTS ASSOCIATION OF REALTORS® or substantial equivalent which, when executed, shall become the entire agreement between the parties and this Offer shall have no further force and effect.

4. Closing. The SELLER agrees to deliver a good and sufficient deed conveying good and clear record and marketable title at 2:00 a.m. / p.m. on 05/14/2021 at the Worcester or Middlesex County Registry of Deeds or such other time or place as may be mutually agreed upon by the parties.

5. Escrow. The deposit shall be held by Real Estate Marketplace, as escrow agent, subject to the terms hereof. Endorsement or negotiation of this deposit by the real estate broker shall not be deemed acceptance of the terms of the Offer. In the event of any disagreement between the parties concerning to whom escrowed funds should be paid, the escrow agent may retain said deposit pending written instructions mutually given by the BUYER and SELLER. The escrow agent shall abide by any Court decision concerning to whom the funds shall be paid and shall not be made a party to a pending lawsuit solely as a result of holding escrowed funds. Should the escrow agent be made a party in violation of this paragraph, the escrow agent shall be dismissed and the party asserting a claim against the escrow agent shall pay the agent's reasonable attorneys' fees and costs.

6. Contingencies. It is agreed that the BUYER'S obligations under this Offer and any Purchase and Sale Agreement signed pursuant to this Offer are expressly conditioned upon the following terms and conditions:

a. Mortgage. (Delete If Waived) The BUYER'S obligation to purchase is conditioned upon obtaining a written commitment for financing in the amount of \$ 410,000 at prevailing rates, terms and conditions by 05/03/2021. The BUYER shall have an obligation to act reasonably diligently to satisfy any condition within the BUYER'S control. If, despite reasonable efforts, the BUYER has been unable to obtain such written commitment the BUYER may terminate this agreement by giving written notice that is received by 5:00 p.m. on the calendar day after the date set forth above. In the event that notice has not been received, this condition is deemed waived. In the event that due notice has been received, the obligations of the parties shall cease and this agreement shall be void; and all monies deposited by the BUYER shall be returned. In no event shall the BUYER be deemed to have used reasonable efforts to obtain financing unless the BUYER has submitted one application by March 22, 2021 and acted reasonably promptly in providing additional information requested by the mortgage lender.



CONTRACT TO PURCHASE REAL ESTATE #501 (Page 2 of 2)
(With Contingencies)



b. Inspections. (Delete If Waived) The BUYER'S obligations under this agreement are subject to the right to obtain inspection(s) of the Premises or any aspect thereof, including, but not limited to, home, pest, radon, lead paint, energy usage/efficiency, septic/sewer, water quality, and water drainage by consultant(s) regularly in the business of conducting said inspections, of BUYER'S own choosing, and at BUYER'S sole cost by 03/29/2021 If the results are not satisfactory to BUYER, in BUYER'S sole discretion, BUYER shall have the right to give written notice received by the SELLER or SELLER'S agent by 5:00 p.m. on the calendar day after the date set forth above, terminating this agreement. Upon receipt of such notice this agreement shall be void and all monies deposited by the BUYER shall be returned. Failure to provide timely notice of termination shall constitute a waiver. In the event that the BUYER does not exercise the right to have such inspection(s) or to so terminate, the SELLER and the listing broker are each released from claims relating to the condition of the Premises that the BUYER or the BUYER'S consultants could reasonably have discovered.

7. Representations/Acknowledgments. The BUYER acknowledges receipt of an agency disclosure, lead paint disclosure (for residences built before 1978), and Home Inspectors Facts For Consumers brochure (prepared by the Office of Consumer Affairs). The BUYER is not relying upon any representation, verbal or written, from any real estate broker or licensee concerning legal use. Any reference to the category (single family, multi-family, residential, commercial) or the use of this property in any advertisement or listing sheet, including the number of units, number of rooms or other classification is not a representation concerning legal use or compliance with zoning by-laws, building code, sanitary code or other public or private restrictions by the broker. The BUYER understands that if this information is important to BUYER, it is the duty of the BUYER to seek advice from an attorney or written confirmation from the municipality. In addition, the BUYER acknowledges that there are no warranties or representations made by the SELLER or any broker on which BUYER relies in making this Offer, except those previously made in writing and the following: (if none, write "NONE"):

None

8. Buyer's Default. If the BUYER defaults in BUYER'S obligations, all monies tendered as a deposit shall be paid to the SELLER as liquidated damages and this shall be SELLER'S sole remedy.

9. Additional Terms.

See the Attached Addendum pertaining to obtaining Approvals from the Towns of Bolton and Stow to build a future home with access and services.

Jeffrey S. Secker dotloop verified 03/08/21 10:42 AM EST BUYER BUYER

SELLER'S REPLY

SELLER(S): (check one and sign below)

- (a) ACCEPT(S) the Offer as set forth above at _____ a.m. / p.m. on this _____ day of _____.
- (b) REJECT(S) the Offer.
- (c) Reject(s) the Offer and MAKE(S) A COUNTEROFFER on the following terms:

This Counteroffer shall expire at _____ a.m. / p.m. on _____ if not withdrawn earlier.

SELLER or spouse SELLER

(IF COUNTEROFFER FROM SELLER) BUYER'S REPLY

The BUYER: (check one and sign below)

- (a) ACCEPT(S) the Counteroffer as set forth above at _____ a.m. / p.m. on _____ day of _____.
- (b) REJECT(S) the Counteroffer.

BUYER BUYER

RECEIPT FOR DEPOSIT

I hereby acknowledge receipt of a deposit in the amount of \$ _____ from the BUYER this _____ day of _____.

Escrow Agent or Authorized Representative



ADDENDUM

Date 03/06/2021

Page 1 of 1 Pages

This is an Addendum to the Real Estate Purchase Contract between the parties dated 03/06/2021 pertaining to the property located at Maple Street, Stow, MA and Teele Rd, Bolton, MA

1. This offer is Subject to the Buyer successfully getting a meeting with the Planning Board of the two towns to discuss the best location on the lots for installing a driveway to access the buildable section of the 4 parcels as described in Book 52462 Pg 364 in Worcester County Registry of Deeds and Book 63791 Page 118 in Middlesex County Registry of Deeds.
2. Subject to the Buyer obtaining approval from the the Town of Bolton and/or the Town of Stowe for at minimum two buildable lots within the parcel.
3. This offer is subject to the Buyer obtaining assurance from the respective two towns that any and all variances needed to gain access to the buildable section of the parcels that most be accessed by crossing the existing wetlands is granted. Subject to current satisfactory perc tests and septic design.
4. The Buyer will conduct all tests necessary at his cost.
5. Offer is subject to 108 Warren Street, Boylston. MA successfully closing which will be placed on the market within five days of this offer being accepted and will be sold simultaneously while Buyer is working on seeking approval from the Town of Stowe planning board and from town Town of Bolton planning board, building dept and conservation dept.

Jeffrey S. Socha
dotloop verified
 03/07/21 9:48 AM EST
 INNN-9USD-NZGR-LNZG
 (Buyer) (Date)

(Seller) (Date)

(Buyer) (Date)

(Seller) (Date)



MASSACHUSETTS ASSOCIATION of REALTORS®

COVID-19 ADDENDUM

The parties recognize that the worldwide COVID-19 virus pandemic has substantially interfered and may continue to interfere with the consummation of real estate transactions, due to such issues as closed governmental offices and delays in obtaining required services from third parties. To minimize the impact of this pandemic, the parties agree that they will exercise best efforts to utilize remote services to perform obligations under the contract that otherwise cannot be performed in person due to a medically necessary or mandatory quarantine or governmental order, including, where feasible, the use of methods such as electronic signatures and online recording.

The parties further agree that the Time for Performance shall be extended upon written notice by either party if such party is unable to fulfill its obligations under the Agreement due to an Excused COVID-19 Delay as defined in this Addendum.

An Excused COVID-19 Delay means the unavailability or closure of required third-party or governmental services or offices as a result of the COVID-19 pandemic, including moving companies, government inspectors, title insurers, and lenders, that prevents either party from performing its obligations under this Agreement. An Excused COVID-19 Delay shall also include [check applicable boxes]

- _____ Circumstances caused by COVID-19 that delay or prevent Seller in closing on Seller's existing agreement to purchase a new home
- _____ Circumstances caused by COVID-19 that delay or prevent Buyer from closing on Buyer's existing agreement to sell Buyer's current home
- _____ The withdrawal or termination by Buyer's lender of a previously made written commitment
- _____ [insert other COVID-19 contingencies if any] _____

In the event notice is given of an Excused COVID-19 Delay, the Time for Performance shall automatically be extended until the date that is ten (10) business days after the end of the circumstances constituting the Excused COVID-19 Delay, but in no event later than 30 days after the Time for Performance set forth in the Agreement.

In the event that due to one or more Excused COVID-19 Delays, the closing cannot occur within the above-stated limit of 30 days after the Time for Performance set forth in the Agreement, then unless the Buyer and Seller agree to further extend the closing, the Agreement shall terminate and all Deposits shall be returned to the Buyer.



MASSACHUSETTS ASSOCIATION of REALTORS®

Date: _____

Buyer [print name]

Buyer [signature]

Jeffrey S. Socha

Buyer [print name]

Jeffrey S. Socha dotloop verified
03/07/21 9:48 AM EST
M5WT-MJW3-YN62-FZNG

Buyer [signature]

Seller [print name]

Seller [signature]

Seller [print name]

Seller [signature]

CERTIFICATE OF SERVICE

I certify that I, Alan DiPietro, served a copy of this paper on Plaintiff, Town of Bolton, via e-mail to the following address.

David J. Coppola, Esq.
Coppola & Coppola, P.C.
40 South Street, Suite 204
Marblehead, MA 01945
david@coppolalaw.us

Dated: December 7, 2023

A handwritten signature in black ink, appearing to read 'Alan DiPietro', written over a horizontal line.

Alan DiPietro, pro se
110 Teele Road
Bolton MA 01740
(351) 210 0639

CERTIFICATE OF SERVICE

I certify that I, Alan DiPietro, served a copy of this paper on the Parties to this Action, Town of Bolton, Goddard Consulting, LLC, Town of Stow and Joe Boynton, Esq. via email addresses below.

Town of Bolton
c/o David J. Coppola, Esq.
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Marblehead, MA 01945
david@coppolalaw.us

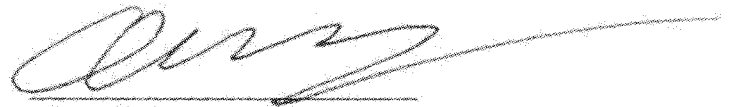
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joeboynton@verizon.net

Dated: December 22, 2023



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