

12/17/07

5

Christine Joyce

From: Dore' Hunter
Sent: Thursday, December 13, 2007 1:51 PM
To: Manager Department
Subject: 17 Dec Packet Item

John,

I will look forward to reading counsel's opinion re the issue raised by Mr. Bendig re the proposed sidewalk from Post Office Square to Route 2A.

Regards,
Dore' Hunter
Chairman of the Board of Selectman & VSO, Town of Acton, MA
Telephone: 978-263-0882
Email: dorehunter@aol.com

See AOL's top rated recipes and easy ways to stay in shape for winter.

Christine Joyce

From: Stephen Anderson
Sent: Friday, December 07, 2007 10:12 AM
To: John Murray; Dean Charter
Subject: Acton/GenSel: Analysis of Public Shade Tree and Scenic Road Statutes - Main Street and Isaac Davis Trail

John and Dean:

Attached are:

1. My Memorandum analyzing the Public Shade Tree and Scenic Road Statutes with respect to the proposed removal of public shade trees near the intersection of Main Street and the Isaac Davis Trail;
2. An excerpt from the 1964 Annual Town Report for the vote on the Isaac Davis Trail easement on the Conant property;
3. The Conants' Deed recorded at Book 13590, Page 240;
4. "Plan Prepared for the Study of Proposed Easements for Traversing the Route of the Isaac Davis Trail in Acton, Mass." dated December 1961 prepared by Snelling, Hilton and Associates; and
5. Easement from Brewster Conant to Town of Acton recorded at Book 10661, Page 261

Please let me know if you have any questions.

Stephen D. Anderson
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge MA 02141

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12/14/2007

John Murray

Subject: FW: Acton/GenSel: Analysis of Public Shade Tree and Scenic Road Statutes - Main Street and Isaac Davis Trail

From: Stephen Anderson
Sent: Friday, December 07, 2007 3:07 PM
To: John Murray
Subject: RE: Acton/GenSel: Analysis of Public Shade Tree and Scenic Road Statutes - Main Street and Isaac Davis Trail

Hi John:

I just left a message – you’re in a meeting – to make sure I understand the questions below.

On Conclusion 3, are there any shade trees literally on the Main Street sideline at its precise intersection with the Isaac Davis Trail? If not, there’s no issue. If so, I meant what I said – on the common boundary, you should assume that the stricter statute governs (at least as long as complying with the stricter statute does not interfere with the use of the state numbered road).

On the second point (paving the sidewalk in the immediate area of ID trail), G.L. c. 40, § 15C, regulates the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, within scenic roads. If either of those two things is going to happen within the Isaac Davis Trail, there needs to be a consolidated hearing in front of the planning board and the tree warden before there can be “any repair, maintenance, reconstruction, or paving work done with respect thereto.” If neither cutting of trees nor destruction of stone walls will occur, there does not need to be a hearing before paving occurs within the scenic road corridor. (There may be independent historic controls given the IDT’s historic status, but as far as the scenic road statute is concerned, the inquiry would end here.)

Steve

From: John Murray [mailto:jmurray@acton-ma.gov]
Sent: Friday, December 07, 2007 12:37 PM
To: Stephen D. Anderson
Subject: RE: Acton/GenSel: Analysis of Public Shade Tree and Scenic Road Statutes - Main Street and Isaac Davis Trail

Steve:

Two items:

#3 in the conclusion section -- I would suggest that the wording be changed to: While technically there is no requirement I suggest out of abundance of caution or some other like wording.

I will admit to a quick reading- however, I do not believed you touched upon the issue of not paving the sidewalk in the immediate area of ID trail?

John

12/14/2007

From: Stephen Anderson
Sent: Friday, December 07, 2007 10:12 AM
To: John Murray; Dean Charter
Subject: Acton/GenSel: Analysis of Public Shade Tree and Scenic Road Statutes - Main Street and Isaac Davis Trail

John and Dean:

Attached are:

1. My Memorandum analyzing the Public Shade Tree and Scenic Road Statutes with respect to the proposed removal of public shade trees near the intersection of Main Street and the Isaac Davis Trail;
2. An excerpt from the 1964 Annual Town Report for the vote on the Isaac Davis Trail easement on the Conant property;
3. The Conants' Deed recorded at Book 13590, Page 240;
4. "Plan Prepared for the Study of Proposed Easements for Traversing the Route of the Isaac Davis Trail in Acton, Mass." dated December 1961 prepared by Snelling, Hilton and Associates; and
5. Easement from Brewster Conant to Town of Acton recorded at Book 10661, Page 261

Please let me know if you have any questions.

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12/14/2007

**PRIVILEGED AND CONFIDENTIAL
MEMORANDUM**

TO: John Murray, Temporary Town Manager
Dean Charter, Tree Warden
FROM: Stephen D. Anderson, Town Counsel
RE: Acton/GenSel: Analysis of Public Shade Tree and Scenic Road Statutes
DATE: December 3, 2007

You have asked several questions about the inter-relationship between the statutes governing the powers and duties of the tree warden and the statutes and Town bylaw governing scenic roads, with particular reference to the proposed removal of public shade trees near the intersection of Main Street and the Isaac Davis Trail. To answer these questions, I must first set out the relevant statutes and bylaw:

1. Definition of “Public Shade Trees”

Under G.L. c. 87, § 1, “public shade trees” include:

1. “All trees within a public way or on the boundaries thereof;”¹ and
2. Trees “planted in accordance with the provisions of [chapter 87] section 7.”²

When “the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway,” the tree or trees in question “shall be taken to be within the highway and to be public property until the contrary is shown.” G.L. c. 87, § 1.

¹ Public shade trees do not include trees within a State highway. See City of Medford v. Metropolitan Dist. Com'n, 303 Mass. 537, 538 (1939).

² Under Section 7, “Cities and towns may appropriate money for the purpose of acquiring and planting shade trees in public ways. The tree warden, or a private organization acting with the written consent of the tree warden, may plant shade trees acquired with public or private funds in a public way, or if he deems it expedient, upon adjoining land at a distance not exceeding 20 feet from the layout of such public way for the purpose of improving, protecting, shading or ornamenting the same; provided, however, that the written consent of the owner of such adjoining land shall first be obtained.”

2. Removal of Public Shade Trees

Under G.L. c. 87, §§ 3 and 4, public shade trees may generally only be removed:

1. by the tree warden, his deputy, or a person acting under a permit from the tree warden;
2. after a public hearing by the tree warden,³ or a consolidated public hearing by the tree warden and the planning board in the case of a scenic road [discussed further below];⁴ and
3. with the approval of the selectmen or mayor if written objection has been made.⁵

See also City of Medford v. Metropolitan Dist. Com'n, 303 Mass. 537, 538 (1939), citing Graham v. Board of Public Works of Pittsfield, 285 Mass. 544 (1934).

Under G.L. c. 87, § 3, “Any person injured in his property by the action of the officers in charge of the public shade trees as to the trimming, cutting, removal or retention of any such tree,

³ Specifically, G.L. c. 87, § 3, provides as follows (emphasis added):

Except as provided by section five, public shade trees shall not be cut, trimmed or removed, in whole or in part, by any person other than the tree warden or his deputy, even if he be the owner of the fee in the land on which such tree is situated, except upon a permit in writing from said tree warden, nor shall they be cut down or removed by the tree warden or his deputy or other person without a public hearing and said tree warden or his deputy shall cause a notice of the time and place of such hearing thereof, which shall identify the size, type and location of the shade tree or trees to be cut down or removed, to be posted in two or more public places in the town and upon the tree at least seven days before such hearing and published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than seven days before the day of the hearing or if no such local newspaper exists then in accordance with the provisions of section six of chapter four; . . .

⁴ Under G.L. c. 87, § 3, “when a public hearing must be held under the provisions of this section and under section fifteen C of chapter forty prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided herein.”

⁵ In the event of an objection to removal of public shade trees, G.L. c. 87, § 4, provides as follows (emphasis added):

Tree wardens shall not cut down or remove or grant a permit for the cutting down or removal of a public shade tree if, at or before a public hearing as provided in the preceding section, objection in writing is made by one or more persons, unless such cutting or removal or permit to cut or remove is approved by the selectmen or by the mayor.

or as to the amount awarded to him for the same, may recover the damages, if any, which he has sustained, from the town under chapter seventy-nine” (the eminent domain statute).

3. Exceptions to Tree Removal Statutes’ Hearing Requirements

G.L. c. 87, § 5 provides three exceptions to the public hearing requirements of §§ 3 and 4.

These exceptions are:⁶

1. The tree warden or his deputy may cut down small trees and bushes without a hearing. Specifically, he may “trim, cut down and remove” trees “less than 1-1/2 inches in diameter 1 foot from the ground.”
2. The tree warden may trim, cut down or remove any tree which endangers persons traveling on the public way without a hearing. The warden may also be ordered by the Selectmen to cut down trees “which endanger, hinder or incommode persons traveling thereon.” This section only applies if the tree endangers persons in the public way. If the tree endangers abutting land or structures not within the way, a hearing should be held.
3. The tree warden may remove a tree “if so ordered by the proper officers for the purpose of widening the highway.” This exception applies only to a widening of the layout of the street, and does not apply to widening of the paved portion of the street within the existing layout. Graham v. Board of Public Works of Pittsfield, 285 Mass. 544, 547 (1934). A hearing under § 3 would be required for removal for widening of the pavement.

In all other cases a hearing should be held before removing public shade trees.

⁶ The exceptions set forth in G.L. c. 87, § 5, are as follows (emphasis added):

Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground, and bushes, standing in public ways; and, if ordered by the mayor, selectmen, road commissioners or highway surveyor, shall trim or cut down trees and bushes, if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon or to obstruct buildings being moved pursuant to the provisions of section eighteen of chapter eighty-five. Nothing contained in this chapter shall prevent the trimming, cutting or removal of any tree which endangers persons traveling on a highway, or the removal of any tree, if so ordered by the proper officers for the purpose of widening the highway and nothing herein contained shall interfere with the suppression of pests declared to be public nuisances by section eleven of chapter one hundred and thirty-two, including the Dutch elm disease.

5.□. Scenic Road Statute and Bylaw

The Scenic Road Statute, G.L. c. 40, § 15C, provides as follows (emphasis added):

Upon recommendation or request of the planning board, conservation commission or historical commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway as a scenic road; provided, however, that a numbered route may be designated by a city or town as a scenic road if its entire length is contained within the boundaries of said city or town, and no part of said route is owned or maintained by the commonwealth.

- Main Street

In Acton, Main Street is a state numbered road (Route 27). That numbered route extends into abutting towns. As a result, Main Street is not, and cannot be, designated as a scenic road under the state statute.

Acton does have a Scenic Road Bylaw that defines a number of scenic roads by reference to the Main Street sideline, including J-8 High Street (“from the easterly sideline of Main Street”); J-11 Hayward Road (“to the western sideline of Main Street”); J-12 Coughlin Street (“from the southeasterly sideline of Main Street”); J-16 Newtown Road (“to the northwesterly sideline of Main Street”); J-17 Concord Road (“from the southeasterly sideline of Main Street”); J-23 Brook Street (“from the southeasterly sideline of Main Street”); J-24 Carlisle Road (“from the easterly sideline of Main Street”); and J-26 Nagog Hill Road (“from the northwesterly sideline of Main Street”).

- Isaac Davis Trail

In addition, Acton’s Scenic Road Bylaw designated the following roads “as scenic roads in accordance with the recommendation of the Planning Board under section 15C, Chapter 40 of the General Laws as amended by Chapter 67 of the Acts of 1973 ...:” (underlined emphasis added):

...

J-32 Isaac Davis Trail beginning at the most westerly end of Minuteman Road thence southwesterly over land of the Town of Acton and the existing easement on land of James Progin (#8 John Swift Road – Lot 43A) to John Swift Road.

J-33 Isaac Davis Trail from Musket Drive to Hayward Road over the existing easement on land of Barbara Keizer (#4 Musket Drive – Lot 147).

J-34 Isaac Davis Trail (formerly known as Revolutionary Road) through Conant's Land, beginning at Main Street at a point southwesterly about 1175 feet from the intersection of the southerly line of Main Street and the southerly line of Brook Street; thence easterly to Great Road and being intended to be all parts of the old road, and said point at Great Road, being about 350 feet from the southerly side of Brook Street; said measurement being more or less.

Unlike other scenic roads in Acton, the Isaac Davis Trail through the Conant's land was not called out with reference to the sideline of Main Street but rather is said to begin "at Main Street at a point" located a certain distance from a certain intersection. It then extends thence "easterly to Great Road and being intended to be all parts of the old road"⁷ In connection with the Isaac Davis Trail over the Conant property in this area, the Town has the benefit of "a right granted by Brewster Conant to the Town of Acton to use a portion of said premises for foot passage on two days each year by deed recorded with Middlesex S.D. Deeds Book 10661, Page 261, so far as said grant is now in force and applicable." See Deed recorded in the MSRDR at Book 13590, Page 240.⁸

⁷ In addition to being designated a scenic road, the Isaac Davis Trail in Acton and Concord is identified in the State Register of Historic Places as having been listed on the National Register of Historic Places on April 11, 1972 (#72001347). I do not have a copy of this registration information, so I cannot analyze it as part of this memorandum.

⁸ Under Article 10 of the 1964 Annual Town Meeting, the Town accepted a temporal easement from Brewster Conant granted under the instrument recorded at Book 10661, Page 261. The Town Meeting acceptance and the easement itself reference the following grant (emphasis added):

"I, Brewster Conant, of Evanston, Illinois for consideration paid Grant to the Town of Acton, with QUITCLAIM COVENANTS, the right and easement to use a certain path or trail known as the Captain

A plan entitled “Plan Prepared for the Study of Proposed Easements for Traversing the Route of the Isaac Davis Trail in Acton, Mass.” dated December 1961 prepared by Snelling, Hilton and Associates (copy attached) calls out several sections of the Isaac Davis Trail including “Section C” at its apparent intersection with the 1927 County Layout of Main Street. The plan does not show the Isaac Davis Trail touching the Main Street layout line, but rather shows the path intersecting a stone wall at a point proximate to the southerly line of Main Street. According to the Vicinity Map on the Plan, this point appears to correspond to the “point southwesterly about 1175 feet from the intersection of the southerly line of Main Street and the southerly line of Brook Street” for the designation “J-34 Isaac Davis Trail” in the Town’s Scenic Road Bylaw.

- Removal of Public Shade Trees From a Scenic Road

G.L. c. 40, § 15C, regulates the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, within scenic roads (emphasis added):⁹

Isaac Davis Trail and the land on either side thereof within fifty (50) feet of the center line of said path or trail for passage on foot only over those certain parcels of land shown as Parcel 2 and Parcel 3 on a plan entitled “Land in Acton Owned by Augustine B. Conant and Brewster Conant” dated February 18, 1958 by Harlan E. Tuttle, Surveyor, recorded with Middlesex South District Registry of Deeds at the end of Book 9131.

“Said right and easement may be exercised only on April 19 and July 4 of each year (or on such days as may in the future be designated for the historic and patriotic observances now held on such dates).

“The grantee herein shall have the right to determine by survey the exact location of the center line of said path or trail and to record a plan thereof which shall be determinative of the exact location of the easement herein granted.

“The grantor reserves the right as appurtenant to land on either side of said path or trail owned by him to construct a road or roads across said path or trail of sufficient width to satisfy the standards of the Town of Acton with respect to public ways and to use said road or roads for all purposes for which streets and ways are commonly used in said Town.

⁹ The Town’s Scenic Road Bylaw provides similar coverage in that it paraphrases § 15C to state that it “provides in part that any repair, maintenance, reconstruction, or paving work done with respect to any road designated as a scenic road shall not involve or include the cutting or removal of trees, or tearing down, or destruction of stone walls, or portions thereof, except with prior written consent of the Planning Board after a public hearing.”

After a road has been designated as a scenic road any repair, maintenance, reconstruction, or paving work done with respect thereto shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, after a public hearing duly advertised twice in a newspaper of general circulation in the area, as to time, date, place and purpose, the last publication to occur at least seven days prior to such hearing

In the event of public shade tree are to be removed from a scenic road, G.L. c. 40, § 15C (like G.L. c. 87, § 3) provides for a consolidated hearing of the tree warden or his deputy and the planning board (emphasis added):

[W]hen a public hearing must be held under the provisions of this section and under section three of chapter eighty-seven prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided in said section three of chapter eighty-seven.

5. Conclusion: Cutting Public Shade Trees Near the Isaac Davis Trail

From this authority, the following general principles can be drawn with respect to the removal of public shade trees by the tree warden in the vicinity of the Main Street and the Isaac Davis Trail:

1. Assuming that the boundaries of Main Street can be “made certain by records or monuments,” public shade trees within the boundaries of the Main Street public way may be removed by the tree warden after (a) a public hearing by the tree warden, and (b) with the approval of the selectmen if written objection has been made.
2. Public shade trees within the boundaries of the Isaac Davis Trail across the Conant property may be removed by the tree warden only after (a) a consolidated public hearing by the tree warden and the planning board, and (b) with the approval of the selectmen if written objection has been made.

3. Public shade trees on the boundary between Main Street and the Isaac Davis Trail should, out of an abundance of caution, be treated as public shade trees within the boundaries of the Isaac Davis Trail. The procedures on paragraph 2 should be followed. Any such tree would, literally, need to fall on the Main Street sideline at its precise intersection with the Isaac Davis Trail to be subject to this paragraph 3.
4. If and when Main Street is relocated in connection with the proposed construction of a sidewalk in the vicinity of the Conant property, public shade trees within the new boundaries of the Main Street public way may be removed by the tree warden as in paragraph 1 above; however, if the relocation of Main Street causes Main Street to overlap further the historical boundaries of the Isaac Davis Trail, the procedures of paragraph 2 should be followed with respect to any public shade trees within the newly overlapping area.

TOWN OF ACTON
Engineering Dept.



ANNUAL REPORT

TOWN

OF
ACTON

1964



ACTON BUILDS

Article 6
Bill

Voted unanimously: To appropriate the sum of \$217.85, from Surplus Revenue for the payment of a 1963 insurance bill.

Article 7
Chapter 90

Voted: To appropriate from Surplus Revenue the sum of \$2,252.93, to the Chapter 90 New Construction 1963 Account

Article 8
Streets

Voted: To accept the following streets, or portions thereof, constructed under the requirements of the Subdivision Control Law and as laid out by the Board of Selectmen according to plans on file with the Town Clerk:

Brucewood Road, 223.12 feet from Oakwood Road
Redwood Road, 228.27 feet from Oakwood Road

including the takings or acceptance of easements for drainage, or other purposes, where shown on said plans, and appropriate from Surplus Revenue the sum of \$1,000.00, for the completing of the said streets.

Article 9

Voted unanimously: To accept the following street, or portion thereof, constructed under the requirements of the Subdivision Control Law and as laid out by the Board of Selectmen according to plans on file with the Town Clerk:

Oakwood Road, 2,265.22 feet from Piper Road

including the takings or acceptance of easements for drainage, or other purposes, where shown on said plans, and to appropriate from Surplus Revenue the sum of \$3,000.00, for the completing of 1,227.09 feet of the above street from Brucewood Road.

Article 10

Voted unanimously: To accept the Grant of Easement of Brewster Conant to the Town of Acton, dated March 6, 1964, said grant reading as follows:

"I, Brewster Conant, of Evanston, Illinois for consideration paid Grant to the Town of Acton, with QUITCLAIM COVENANTS, the right and easement to use a certain path or trail known as the Captain Isaac Davis Trail and the land on either side thereof within fifty (50) feet of the center line of said path or trail for passage on foot only over those certain parcels of land shown as Parcel 2 and Parcel 3 on a plan entitled "Land in Acton Owned by Augustine B. Conant and Brewster Conant" dated February 18, 1958 by Harlan E. Tuttle, Surveyor, recorded with Middlesex South District Registry of Deeds at the end of Book 9131.

"Said right and easement may be exercised only on April 19 and July 4 of each year (or on such days as may in the future be

designated for the historic and patriotic observances now held on such dates).

"The grantee herein shall have the right to determine by survey the exact location of the center line of said path or trail and to record a plan thereof which shall be determinative of the exact location of the easement herein granted.

"The grantor reserves the right as appurtenant to land on either side of said path or trail owned by him to construct a road or roads across said path or trail of sufficient width to satisfy the standards of the Town of Acton with respect to public ways and to use said road or roads for all purposes for which streets and ways are commonly used in said Town.

"I, Elizabeth S. Conant, wife of said grantor, release to said grantee all rights of dower and homestead and other interests therein.

"Witness our hands and seals this 6th day of March, 1964.

Brewster Conant
Elizabeth S. Conant

"STATE OF ILLINOIS

"Cook County, ss.

March 6, 1964

"Then personally appeared the above named Brewster Conant and acknowledged the foregoing instrument to be his free act and deed, before me

Edwin R. Bates
Notary Public"

Resolution. Voted the following resolution:

Resolved: That the Clerk advise Mr. Conant in writing of the vote passed under Article 10 and extend the sincere thanks of the Town for his public spirit and generosity.

Article 11

Voted unanimously: To amend the Building Bylaw of the Town of Acton by striking out the second sentence of Section 12 and inserting therein the following:

Openings from buildings to garages shall be restricted to a single doorway, provided with not less than 1 3/4" thick solid door, or panel door, with at least two (2) coats of fire retardant paint on garage side, or approved fire door of 3/4 hour fire resistant rating. This door must be equipped with self-closing mechanism and no glass shall be in door except fire glass.

Article 12

Voted: To amend the Building Bylaw of the Town of Acton by inserting at the end of the second sentence in Section 13, the following words: "And have suitable stairs if below grades". Also by striking out the following words in the 4th sentence of Section 13, "An area ten feet

E 4/9 47, 60, 11
C 4/20

R11000

22-18-1965
562 Main Street
Acton Mass 01720

We, Brewster Conant and Carleton P. Burrill, Trustees of The Conant-Acton Real Estate Trust under instrument dated October 19, 1964 and recorded with Middlesex South District Deeds Book 10678, Page 301 for no monetary consideration and pursuant to instrument of revocation of said trust executed by Brewster Conant dated November 14, 1978 and recorded herewith grant to Brewster Conant now of Acton, Massachusetts the following premises:

1. Premises in the town of Acton, Massachusetts known as the Barrett Lot containing seven acres, one hundred five and nine-tenths (105.9) rods, more or less, described in deed of Martina A. Gage to Elbridge R. Conant, Augustine B. Conant, Susan C. Parker, Luther Conant and Charlotte Conant dated December 22, 1923 and recorded with Middlesex South District Deeds Book 4693, Page 589, being bounded according to said deed as follows:

Beginning at the southwesterly corner of the premises at a stone post at the corner of land of Simon Tuttle and of Luther Conant, thence north one degree and eighteen minutes East along land of said Tuttle forty-seven (47) rods, twenty-three (23) links to a stone at the corner of other land owned by said Tuttle, thence South seventy-nine (79) degrees and thirty-two (32) minutes East along land of said Tuttle twenty-six (26) rods and twenty (20) links to some stones, thence South one degree and eighteen (18) minutes West along other land of said Tuttle forty-four (44) rods and fifteen (15) links to some stones at land of Luther Conant, thence North eighty-six (86) degrees and forty-seven (47) minutes West twenty-six (26) rods and fourteen (14) links to the stone post at point of beginning.

2. All real estate in the town of Acton which passed to Elbridge R. Conant, Augustine B. Conant, Susan C. Parker, Luther Conant and Charlotte Conant as heirs of their father, Luther Conant, who died November 13, 1922 intestate, Middlesex Probate #139317, leaving said five children as his only next of kin.

For Grantor's title see deed of Brewster Conant dated October 26, 1964 recorded with Middlesex South District Deeds Book 10678, Page 299.

Said premises are conveyed subject to and with the benefit of rights, easements, restrictions and agreements of record, if any, insofar as the same are now in force and applicable including specifically a right granted by Brewster Conant to the Town of Acton to use a portion of said premises for foot passage on two days each year by deed recorded with Middlesex S.D. Deeds Book 10661, Page 261, so far as said grant is now in force and applicable.

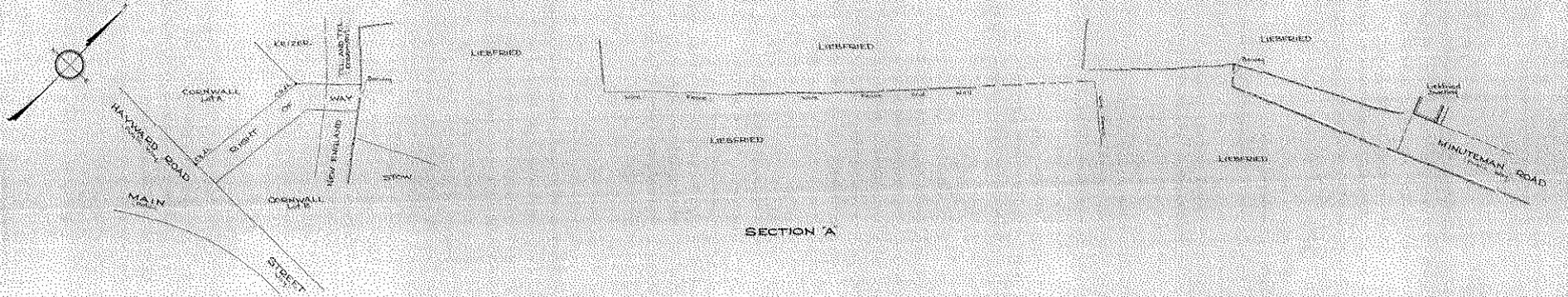
Witness our hands and seals this 14th day of

November, 1978.

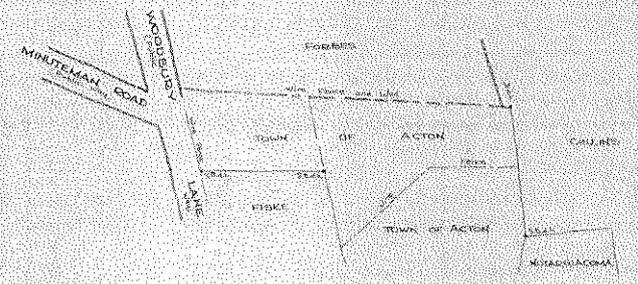
BEHIND 366 MAIN

Brewster Conant
Brewster Conant

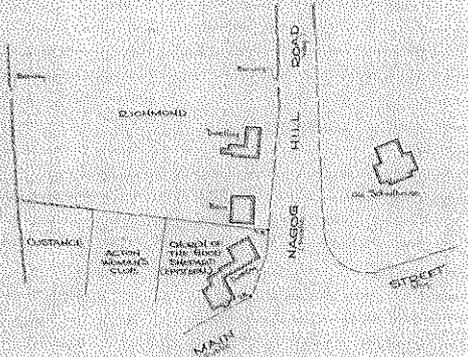
Carleton P. Burrill
Carleton P. Burrill
Trustees as aforesaid and not individually



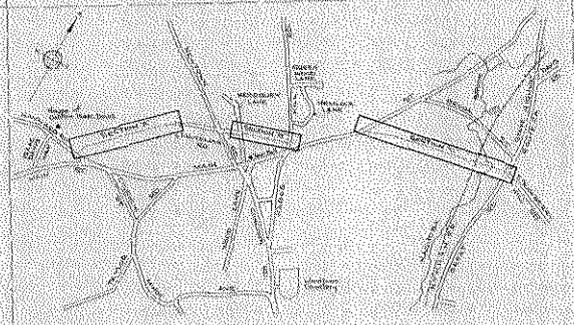
SECTION A



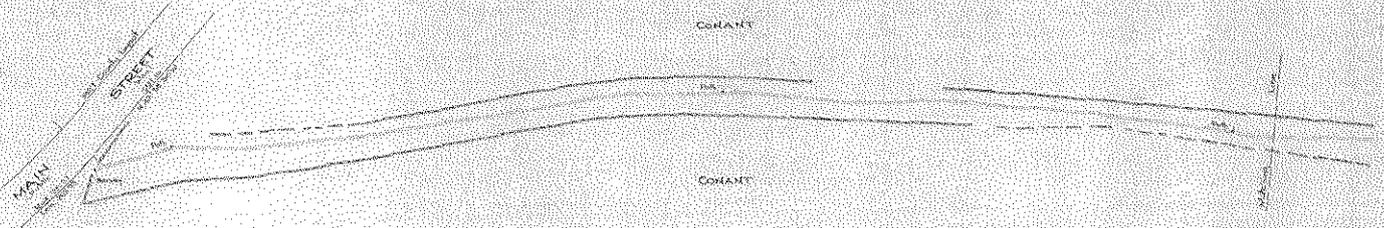
SECTION B



SECTION C



VICINITY PLAN
Scale: 1 inch = 500 feet



SECTION C

PLAN PREPARED
FOR THE
STUDY OF PROPOSED EASEMENTS
FOR TRAVERSING THE ROUTE OF
THE ISAAC DAVIS TRAIL
IN
ACTON, MASS
SCALE 1/4" = 50 FEET
SHELLING ALTHM AND ASSOCIATES
CIVIL ENGINEERS AND LAND SURVEYORS
DECEMBER, 1961
LUDLOW, MASS



witness our hands and seals this

6th

MARCH, 1964.

Brewster Conant
Brewster Conant

Elizabeth S. Conant
Elizabeth S. Conant

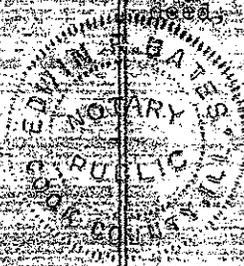
STATE OF ILLINOIS

COMMONWEALTH OF MASSACHUSETTS

COOK COUNTY, SS.

MARCH 6, 1964

Then personally appeared the above named Brewster Conant and acknowledged the foregoing instrument to be his free act and deed before me.



Edwin Bates
Notary Public

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BK 10551 PG 261

GRANT OF EASEMENT

I, BREWSTER CONANT, of Evanston, Illinois for consideration paid GRANT to the Town of Acton with QUIET ENJOYMENT COVENANTS the right and easement to use a certain path or trail known as The Captain Isaac Davis Trail and the land on either side thereof within fifty (50) feet of the center line of said path or trail for passage on foot only over those certain parcels of land shown as Parcel 2 and Parcel 3 on a plan entitled "Land in Acton Owned by Augustine B. Conant and Brewster Conant" dated February 18, 1958 by Harlan E. Tuttle, Surveyor, recorded with Middlesex South District Registry of Deeds at the end of Book 9131.

Said right and easement may be exercised only on April 19 and July 4 of each year (or on such days as may in the future be designated for the historic and patriotic observances now held on such dates).

The grantee herein shall have the right to determine by survey the exact location of the center line of said path or trail and to record a plan thereof which shall be determinative of the exact location of the easement herein granted.

The grantor reserves the right as appurtenant to land on either side of said path or trail owned by him to construct a road or roads across said path or trail of sufficient width to satisfy the standards of the Town of Acton with respect to public ways and to use said road or roads for all purposes for which streets and ways are commonly used in said Town.

I, Elizabeth S. Conant, wife of said grantor, release to said grantee all rights of dower and homestead and other interests therein.