



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 929-6611
Fax (978) 929-6350

Mike Gowing
Chairman, Board of Selectmen

June 27, 2014

Acton Beacon Legal Ad Division

Below please find a copy of a legal advertisement to appear in the Acton Beacon on July 3, 2014

Please send the bill to:

Mustard Seed Properties, LLC
14 Page Road
Bedford, MA 01730
Phone: (781) 275-0718

Please send proof copy and tear sheet to ltomyl@acton-ma.gov

Selectman Adachi

LEGAL NOTICE
TOWN OF ACTON
NOTICE OF HEARING

The Acton Board of Selectmen will hold a public hearing on July 14, 2014 at 7:30 PM in the Francis Faulkner Hearing Room in Town Hall, 472 Main Street, Acton on the application of Mustard Seed Properties, LLC., for a relocation of a utility easement for the existing town sewer main for the property at 400 Massachusetts Ave, Acton, MA.. The application and accompanying plans can be inspected at Town Hall during normal business hours.

Acton Board of Selectmen

Lisa Tomyl

From: Corey York
Sent: Thursday, July 10, 2014 12:40 PM
To: Manager Department
Subject: FW: Taking Documents
Attachments: Mass Ave Taking (A0255221-4xB0BA5) - 2014-07-10.doc; FW: Taking Documents; Eminent Domain Matters; Waiver of Appraisal and Damages (A0256462-2xB0BA5).docx; PLAN - PROPOSED - CM12034 EASE EXHIBIT 2014-02-13.pdf; RE: Mass Ave - St #400 - Sewer Easement Relocation - Acton; RE: Mass Ave - St #400 - Sewer Easement Relocation - Acton

Attached is the final version of the taking document that needs to be signed by the BOS for the acquisition of the utility easement at 400 Mass Ave. The other Waiver document is only for reference. The applicant is suppose to sign this document and forward the original to the Town for the BOS meeting. The relocation of this utility easement was authorized by Article 32 of the 2014 Annual Town Meeting (<http://www.acton-ma.gov/ArchiveCenter/ViewFile/Item/5502>).

If you need any additional information, let me know.

*Thank You,
Corey*

From: Corey York
Sent: Thursday, July 10, 2014 12:22 PM
To: 'Michael Sowyrda'
Subject: RE: Taking Documents

Good Afternoon,

I've attached a copy of the Taking for the BOS meeting on Monday. This is the same document that I originally forwarded to you via email on May 6th. That email is also attached for your reference. The only changes I made to this document are the following:

- Removed the "DRAFT" Watermark
- Deleted the Footer (incorrect reference)
- Revised the BOS to reflect the current members

I don't show a record of any other changes to this document.

Unless I hear otherwise, I plan to forward a copy of the attached Taking Document to the Manager's Office so that it will be included in their packet of information. I forwarded an unsigned copy of the attached waiver to the Manager's Office for their reference, but I informed them that you would be submitting the final signed version to them. As soon as you know whether or not you can get the waiver form signed for the meeting, can you please provide an update for the Manager's Office.

If you have any questions, comments or concerns, please let me know.

*Thank You,
Corey*

From: Corey York
Sent: Tuesday, May 06, 2014 3:39 PM
To: 'Michael Sowyrda'
Subject: FW: Taking Documents

Good Afternoon,

Town Counsel forwarded me a revised copy of the documents for the utility easement at 400 Mass Ave. I'm still reviewing them, but wanted to forward a copy so that you can take a look as well. The approach is still the same as we previously discussed prior to Town Meeting. The Town will release and abandon its rights to the existing easement on the property and then taking the entire easement. When you have a chance can you take a look and get back to us with any comments.

*Thank You,
Corey York, DPW Director / Town Engineer*

472 Main Street
Acton, MA 01720
(978) 929-6630 tele
(978) 929-6340 fax

From: Michael Sowyrda [<mailto:msowyrda@petersandsowyrda.com>]
Sent: Thursday, April 24, 2014 1:04 AM
To: Corey York
Cc: 'Tim Boisvert'; 'V Cuttone'; tom.swaim@hklaw.com
Subject: RE: Taking Documents

Corey—

Any word from Town Counsel on the easement relocation matters. We are rapidly approaching a closing window for the purchase of the property by my client from Mustard Seed. As such, if it matters that Mustard Seed be the party signing the relocation documents, we do need to move this along. Thanks.

Mike

From: Corey York [<mailto:cyork@acton-ma.gov>]
Sent: Friday, April 11, 2014 4:02 PM
To: 'Michael Sowyrda'
Cc: jswerling@bohlereng.com; 'Tim Boisvert'; 'V Cuttone'; Doug Halley
Subject: RE: Taking Documents

Good Afternoon

I wanted to let you know that Town Meeting authorized us to proceed with the modification to this easement. I'll be speaking with Town Counsel shortly and will keep you posted on the status.

*Thank You,
Corey*

From: Michael Sowyrda [<mailto:msowyrda@petersandsowyrda.com>]
Sent: Monday, February 24, 2014 1:00 PM
To: Corey York

Cc: jswerling@bohlereng.com; 'Tim Boisvert'; 'V Cuttone'

Subject: FW: Taking Documents

Corey—

Attached are drafts of the easement documents. These are preliminary drafts which I have sent to both my client and Josh Swerling for review, so I must reserve my rights accordingly. The plan will need to be touched up a bit to get references correct and to eliminate the release of the easement over the Parker Lane Trust land.

I note that the proposed warrant article is not limited to a taking, but allows for grants, etc. Is the Town opposed to a grant if we can do that? Other than the Goodyear lease, there is no encumbrance on the property which would prevent a grant. Not sure that we can get Goodyear on board quickly, but I did want to see if the taking is the Town's preferred and usual method on this.

I would like to speak with you about this before these documents are forwarded on to anyone else for review. What is a good time to call this afternoon?

Mike

ACTON BOARD OF SELECTMEN
COMMONWEALTH OF MASSACHUSETTS

ORDER OF TAKING

WHEREAS, the Town of Acton Board of Selectmen has determined and adjudged that common convenience and necessity require that an easement be taken over the land described in Exhibit A (the "Land") and shown as "Proposed 20' Wide Utility Easement" on that certain plan (the "Plan") entitled "Easement Exhibit Plan 400 Massachusetts Avenue" prepared by Control Point Associates, Inc., dated February 13, 2014 and recorded simultaneously herewith at the Middlesex South District Registry of Deeds (the "Registry") for the purpose of the use, maintenance, repair and replacement of sewer infrastructure currently located on the Land.

WHEREAS, the Town of Acton Board of Selectmen has complied with the requirements of the General Laws for this taking.

WHEREAS, said Town at an Annual Town Meeting duly called for the 7th day of April 2014 approved Article 32 to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise and to accept deeds and easement interests for sewer infrastructure over such Land in Acton.

WHEREAS, it is necessary to acquire an easement on the Land for the purpose of said sewer infrastructure.

NOW THEREFORE, we, the undersigned, being all of the Board of Selectmen of said Town duly elected, qualified and acting as such, do hereby under and by virtue of the provisions of Chapters 40 and 79 of the General Laws and of every other power and authority in any way enabling take by eminent domain a perpetual right and easement over, under and upon the Land for the purpose of use, maintenance, repair, construction, inspection, removal, operation and repair of underground sewer infrastructure currently located on the Land.

Without limiting the provisions of the foregoing, said easement includes the right of the Town of Acton to use, maintain, repair, lay, construct, inspect, remove, operate and replace the underground sewer infrastructure currently located within the Land, including without limitation any manholes, pipes, culverts, pump stations and other appurtenances, and to do all other acts incidental thereto, including the right to pass along and over the Land for the aforesaid purposes (the "Easement"). The Easement shall be non-exclusive and shall be subject to the right of the owner of the Land to use the Land for the installation and maintenance of driveway access, parking, drains and utilities of all types and kinds necessary to service and benefit that certain land shown as "Map 3F Lot 128 N/F Lands of Mustard Seed Properties, LLC Book 48926, Page 082" on the Plan; provided, however, that the owner of the Land shall use diligent and good faith efforts to minimize any interference with the rights of the Town of Acton hereunder resulting from the same.

The Land constitutes a portion of the premises located at 400 Massachusetts Avenue, Acton, Massachusetts conveyed to Mustard Seed Properties, LLC by deed recorded with the Middlesex South District Registry of Deeds in Book 47666, Page 470 (the "Mustard Seed Land").

Without limiting the foregoing, the Easement includes the rights to enter upon the Land for the purpose of effectuating this taking.

Excluded from this taking are all trees, flower gardens, shrubs, improvements, wires, cables, poles, towers, pipes, conduits and other appurtenances for the conveyance of gas, electricity, cable television and telephone communication, private storm drainage facilities or private sanitary sewerage facilities located in or upon the Land.

No damages have been sustained by persons to their property by reason of this taking, and no damages are awarded to any person.

The Town shall simultaneously with the recording of this taking record a document releasing and abandoning its right to that certain easement area shown as "Proposed 20' Wide Permanent Utility Easement" on that certain plan entitled "Easement Plan of Land in Acton, Massachusetts (Middlesex County)," prepared by Stamski and McNary, Inc., dated March 20, 2000 and recorded with the Registry as Plan 424 of 2000 and by document dated April 25, 2000 recorded with the Registry in Book 31346, Page 370.

In exercising its easement rights hereunder, the Town shall (i) except in cases of emergency repairs, provide at least thirty (30) days written notice to the owner of the Mustard Seed Land, of the intent of the Town to engage in maintenance, repair or replacement activities in the Land, and (ii) provide the owner of the Land with an insurance certificate listing the owner of the Mustard Seed Land as an additional insured for all contractors working for the Town in the exercise of the easement rights.

No betterments are to be assessed by reason of this taking.

[The remainder of this page has been intentionally left blank.]

Executed as a sealed instrument this _____ day of _____, 2014.

**Board of Selectmen
Town of Acton**

Mike Gowing, Chair

Katie Green, Vice-Chair

Janet K. Adachi, Clerk

Peter Berry

Franny Osman

COMMONWEALTH OF MASSACHUSETTS

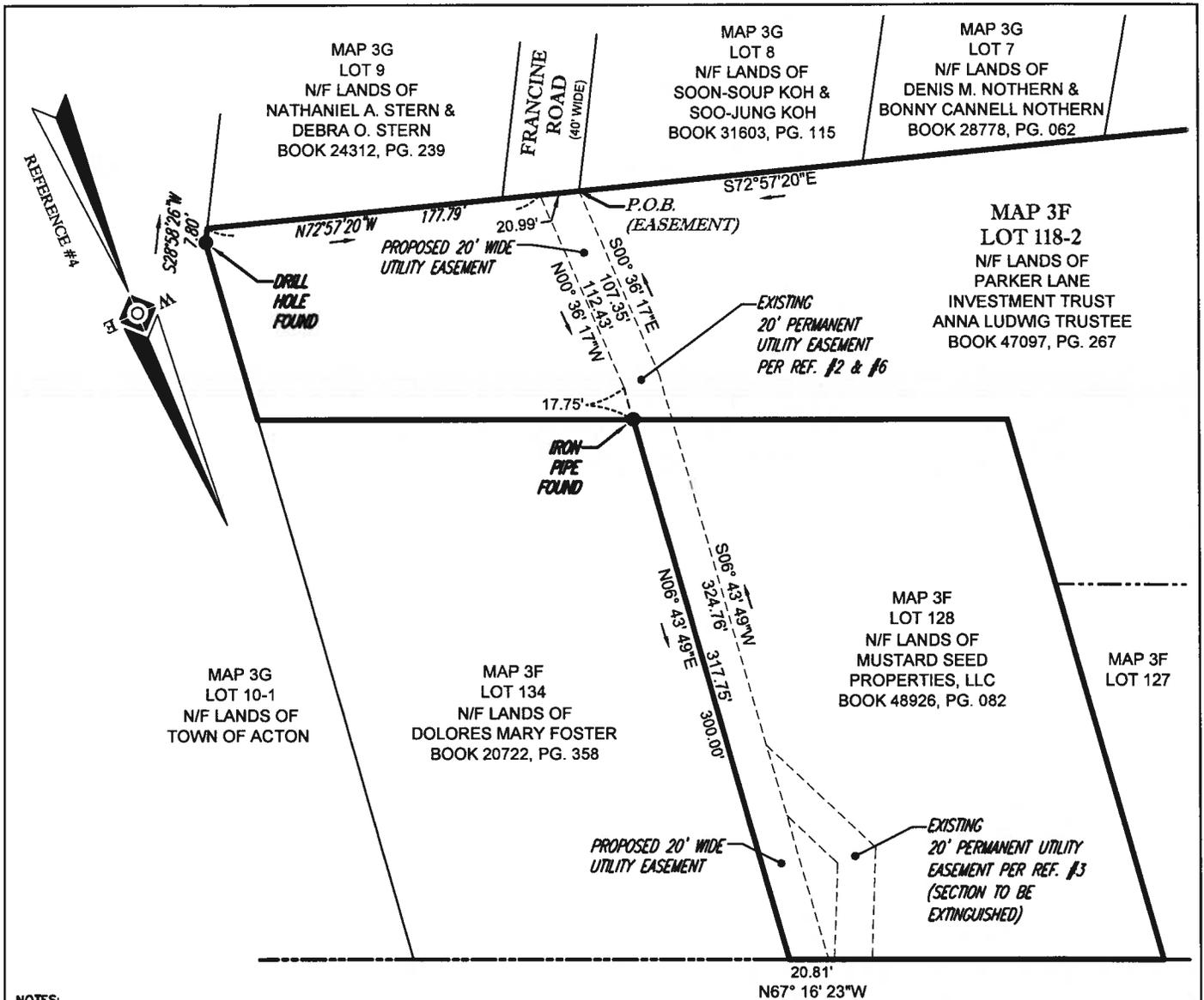
Middlesex, ss

_____, 2014

Then personally appeared before me the foregoing, Mike Gowing, Katie Green, Janet K. Adachi, Peter Berry and Franny Osman, and to me known to be the same persons who executed the foregoing instrument and acknowledged the same to be the free act and deed of the Board of Selectmen on behalf of the Town of Acton.

_____, Notary Public
My commission expires _____

{A0255221.4 }



NOTES:

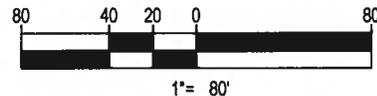
1. THE PURPOSE OF THIS EXHIBIT IS TO SHOW THE PROPOSED RELOCATION OF A 20' WIDE UTILITY EASEMENT LOCATED ON LOT 128.
2. AREA OF PROPOSED 20' WIDE UTILITY EASEMENT ON MAP 3F, LOTS 118-2 & 129 = 8,623 SQUARE FEET OR 0.198 ACRES.
3. THE RECORD DESCRIPTION OF THE EXISTING PERMANENT UTILITY EASEMENT RECORDED IN THE MIDDLESEX COUNTY REGISTRY OF DEEDS AS PLAN 12 OR 2002 (1 OF 3) IS BASED ON A DIFFERENT BEARING SYSTEM THAN IS SHOWN ON THIS EXHIBIT.
4. IMPROVEMENTS HAVE NOT BEEN SHOWN.

REFERENCES:

1. TAX ASSESSOR'S MAP 3F OF THE TOWN OF ACTON, MIDDLESEX COUNTY, COMMONWEALTH OF MASSACHUSETTS.
2. MAP ENTITLED "PLAN OF LAND, 418 MASSACHUSETTS AVENUE, ACTON, MASSACHUSETTS, PREPARED FOR: ALAN BERKO," DATED APRIL, 2001, PREPARED BY ACTON SURVEY & ENGINEERING, INC., FILED IN MIDDLESEX COUNTY SOUTH REGISTRY OF DEEDS AS PLAN NUMBER 12 (1 OF 3) OF 2002.
3. MAP ENTITLED "EASEMENT PLAN OF LAND IN ACTON, MASSACHUSETTS," PREPARED BY STAMSKI AND MCNARY, INC., DATED MARCH 20, 2000, FILED IN MIDDLESEX COUNTY SOUTH REGISTRY OF DEEDS AS PLAN NUMBER 424 OF 2000.
4. MAP ENTITLED "ACTON, MAIN STREET," LAYOUT NO. 5060, SHEETS 3 & 4 OF 4.
5. MAP ENTITLED "BOUNDARY & TOPOGRAPHIC SURVEY, MASSACHUSETTS AVENUE & MAIN STREET, LOTS 113, 117, 118-1, 118-2, 121, 121-1, 121-2, 127, 128, 134, MAP 3F, TOWN OF ACTON, MIDDLESEX COUNTY, MASSACHUSETTS," PREPARED BY CONTROL POINT ASSOCIATES, INC., DATED: JUNE 6, 2012.

MASSACHUSETTS AVENUE

(A.K.A. ROUTE 111)
(PUBLIC - 60' WIDE)



FIELD DATE 5-25-12	EASEMENT EXHIBIT PLAN				
FIELD BK. NO. -	400 MASSACHUSETTS AVENUE				
FIELD BK. PG. -	LOTS 118-2 & 128, MAP 3F TOWN OF ACTON, TOWN OF ACTON, MIDDLESEX COUNTY COMMONWEALTH OF MASSACHUSETTS				
FIELD CREW T.M./J.J.	CONTROL POINT ASSOCIATES, INC.				
DRAWN: S.P.P.	352 TURNPIKE ROAD SOUTHBOROUGH, MA 01772 508.948.3000 - 508.948.3003 FAX				
REVIEWED: R.G.B.	APPROVED: A.J.L.	DATE 02-13-14	SCALE 1"=80'	PROJECT NO. CM12034	SHEET NO. 1 OF 1
WARREN, NJ 908.668.0099 CHALFONT, PA 215.712.9800					

EXHIBIT A

An easement over the following parcel of land located on the south side of Massachusetts Avenue in Acton, Middlesex County, Massachusetts shown as "Proposed 20' Wide Utility Easement" on a plan entitled "Easement Exhibit Plan, 400 Massachusetts Avenue" prepared by Control Point Associates, Inc. dated February 13, 2014 recorded herewith (the "Plan"), which easement area is bounded and described according to said Plan as follows:

Beginning at the northeast corner of a certain parcel located on Massachusetts Avenue in Acton MA shown on the Plan as "Map 3F, Lot 128, n/f Land of Mustard Seed Properties, LLC, Book 48926, Page 082", on the southerly boundary of Massachusetts Avenue;

- THENCE N 67° 16' 23" W by the southerly line of Massachusetts Avenue (20.81) feet to a point;
- THENCE S 06° 43' 49" W three hundred (300') feet to land now or formerly of Parker Land Investment Trust;
- THENCE N 67° 16' 23" W by said Parker Lane Investment Trust land twenty and 81/100 (20.81) feet to an iron pip at land now of formerly of Dolores Mary Foster;
- THENCE N 06° 43' 49" E by land now or formerly of Dolores Mary Foster three hundred (300') feet to the point of beginning;

TOWN OF ACTON, MASSACHUSETTS

Waiver of Appraisal and Damages

KNOW ALL MEN BY THESE PRESENTS, that MUSTARD SEED PROPERTIES, LLC, a Massachusetts limited liability company having a usual place of business at 14 Page Road, Bedford, MA 01730-1333 (the "Owner") owns property located at 400 Massachusetts Avenue, Acton, MA by deed recorded with the Middlesex South District Registry of Deeds ("MSRD") in Book 48926, Page 082 (the "Premises"), such land being shown as "Map 3F, Lot 128 n/f Lands of Mustard Seed Properties, LLC, Book 48926, Page 082" on plan entitled "Easement Exhibit Plan, 400 Massachusetts Avenue" dated February 13, 2014 and prepared by Control Point Associates, Inc. (the "Plan"), which Plan is recorded with the MSRD as Plan ____ of 2014 and is attached hereto and incorporated herein by reference.

As owner of the Premises, in consideration of the sum of one dollar (\$1.00) paid and the simultaneous release by the Town of Acton, Massachusetts of the Current Easement (as such term is defined below), said consideration being hereby acknowledged as full compensation for all damages, if any, sustained by said Owner on account of a taking (the "Taking") to be made by the Town of Acton, a municipal corporation with an address of 472 Main Street, Acton, Middlesex County, Massachusetts, by and through its Board of Selectmen ("Town"), of a perpetual non-exclusive right and easement (the "Easement") over, under and upon that portion of the Premises shown on the Plan as "Proposed 20' Wide Utility Easement" (the "Easement Area") to use, maintain, repair, lay, construct, inspect, remove, operate and replace underground sewer infrastructure of the Town currently located in the Easement Area, Owner hereby waives, releases and forever discharges the Town, its successors and assigns, from all debt, demands, actions, reckonings, bonds, covenants, contracts, agreements, promises, damages and liabilities and any and all other claims of every kind, nature and description whatsoever, both in law and equity, from or in consequence of said Taking, consents to said Taking and waives an appraisal of damages for said Taking.

For purposes of this Waiver, the "Current Easement" shall be the easement taken by the Town of Acton by taking recorded with the MSRD in Book 31346, Page 370 and shown on Plan 424 of 2000.

[Signature to appear on next page.]

Exhibit A Plan

EXECUTED UNDER SEAL this day of , 2014.

MUSTARD SEED PROPERTIES, LLC

By: _____
Daniel Silvestrone, Manager

The Commonwealth of Massachusetts

Middlesex County, ss.

On this ___ day of _____, 2014, before me, the undersigned Notary Public, personally appeared, Daniel Silvestrone, proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of the Mustard Seed Properties, LLC.

Notary Public
My Commission Expires: