

Attachment Q

Patton Gift Agreement

(P.C.J)



2012092700281 Bk:31761 Pg:217  
09/27/2012 12:14 DEED Pg 1/11

## QUITCLAIM DEED

Joanne H. Patton, an unmarried individual, of Hamilton, Essex County, Massachusetts, and Edward H. Ladd and Caleb Loring, III, Executors under the Will of George S. Patton, a/k/a George Smith Patton (Essex Probate Case No. 04P2388EP1), in exercise of the power of sale under said Will and of every other power (herein collectively, the "Grantor"),

for consideration being a gift

grant to the Town of Hamilton, a Massachusetts municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and having a usual place of business at 577 Bay Road, Hamilton, Massachusetts 01936 (herein, the "Town")

with QUITCLAIM COVENANTS

The land with the buildings and improvements thereon known as and numbered 650 Asbury Street, Hamilton, Essex County, Massachusetts and more particularly described in Exhibit A attached hereto and made a part hereof

Being a portion of the premises conveyed to George S. Patton by Partition Deed dated February 20, 1965, recorded with the Essex South District Registry of Deeds in Book 5259, Page 177. Said George S. Patton died June 27, 2004 (Essex Probate Case No. 04P2388EP1).

The Grantor certifies that the premises conveyed hereby is the residential real estate in Hamilton, Massachusetts devised in Article "First" of the Third Codicil of the Will of said George S. Patton to Joanne H. Patton.

Property address: 650 Asbury Street, Hamilton, Essex County, Massachusetts 01936.

Said premises are hereby conveyed subject to the rights of first offer as provided below:

1. In the event that the Town intends to sell, convey or otherwise transfer any part or all of the Property to a third party (other than a board, committee, department or other governmental entity within the Town), except for the land situated in the northwest quadrant of the Property as per the Marshall Gary LLC Schematic Site Plan attached as Exhibit B hereto and made a part hereof, the Town (the "Offeror") must first deliver a written offer (the "Offer") to sell such

Bloomenthal & de Bastos LLC  
935 Main Street  
Waltham, MA 02451

Box 107

property (the "Sale Property") to the each of the following persons who are then living and legally competent or the legal representative of an Offeree who is living and is not legally competent: the Donor, Joanne Holbrook Patton, and her children, Mother Margaret Georgina Patton, George S. Patton, Jr., Robert H. Patton, Helen Patton and Benjamin W. Patton (the "Offerees"), in care of The 1911 Trust Company, LLC.

2. The Offer shall state the sale price for the Sale Property, which shall be an amount equal to the fair market value of the Sale Property as determined by an independent real estate appraiser having at least ten years' experience in the appraisal of comparable property, selected by the Offeror, and any other terms and conditions on which the Offeror is willing to sell the Sale Property.

3. The Offerees shall have thirty (30) days from the date of the Offer to accept the Offer by written notice to the Offeror; provided, however, that if any one or more of the Offerees disputes the fair market value of the Sale Property as stated in the appraisal obtained by Offeror, such Offeree(s) shall give written notice of such dispute to the Offeror within said 30-day period and shall, within sixty (60) days of the date of the Offer, obtain and deliver to Offeror a second appraisal at the sole cost and expense of said Offerees from an independent appraiser having at least ten years' experience in the appraisal of comparable property of his, her or their own choosing, and said second appraisal shall be averaged with the first appraisal obtained by Offeror to determine the fair market value of the Sale Property. If the fair market appraisals of the two independent appraisers diverge by more than ten percent the two appraisers shall agree on a third similarly qualified appraiser, whose expenses and costs shall be shared by the Offeror and the Offeree(s) and the fair market value shall be the average of the three appraisals. If the fair market value of the Sale Property is adjusted as provided in this paragraph 3, the period in which the Offerees may accept the Offer shall expire fifteen (15) days after the date Offeror receives the second appraisal from Offerees.

4. If only one Offeree accepts the Offer, the Offeror and said Offeree shall have an additional forty-five (45) days from the date of the Offeree's acceptance to negotiate in good faith and execute a purchase and sale agreement reasonably acceptable to all parties. If more than one Offeree accepts the Offer and any of them notifies the Offeror in writing prior to the deadline for accepting the Offer that said Offeree is unwilling to take title as tenants in common with the other Offeree(s), the Offeror shall notify the Offerees in writing that the Sale Property will be sold to the highest bidder and shall require each Offeree to submit a written bid for the Sale Property within fifteen days of receipt of such notice at a price which is not less than the original offering price (as adjusted in accordance with paragraph 3, above). The Offeror and the Offeree making the highest bid shall then negotiate in good faith and execute a purchase and sale agreement within 45 days after the determination of the identity of the winning bidder.

5. If none of the Offerees timely accepts the Offer, or if one or more Offerees accepts the Offer but, despite good faith efforts, the parties are unable to timely negotiate and execute a purchase and sale agreement, the Offeror may sell the Sale Property to a third party within one (1) year of the date of the Offer at a price not less than that contained in the Offer (as adjusted in accordance with paragraph 3, above), and on such terms and conditions as are not more favorable to the third party buyer than those contained in the Offer.

6. In the event the Town shall attempt to sell any part or all of the Property without offering the Offerees the right of first offer as provided above, such sale shall be null and void.

7. If the Offeror shall make and record with the Essex County Registry of Deeds an affidavit stating (1) that a conveyance made by the Offeror is made pursuant to a bona fide offer to purchase; (2) that the Offeror has given notice to the Offerees and has otherwise complied with the provisions of this right of first offer; (3) that the Offeror has not received written notice of election to purchase from any Offeree in accordance with the provisions hereof, or that any Offeree who has given notice has failed to complete the purchase in accordance with the provisions hereof; and (4) that the conveyance is made to the third party buyer within one (1) year of the date of the Offer at a price not less than that contained in the Offer (as adjusted in accordance with paragraph 3, above), and on such terms and conditions as are not more favorable to the third party buyer than those contained in the Offer, such affidavit shall be conclusive evidence of compliance with the provisions hereof with respect to such conveyance in favor of the grantee therein and all persons claiming through or under such grantee.

8. The right of first offer reserved in this instrument shall not affect the right of the Town to subject the Property to a mortgage or other security instrument. Any first lender coming into possession of the Property, or any part thereof, pursuant to the remedies provided in a mortgage or foreclosure or deed in lieu of foreclosure shall be exempt from any right of first offer.

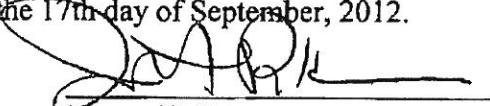
9. The northwest quadrant land referenced in paragraph 1 above is exempt from the requirement of first offering only if the following conditions are met:

- A. The Town is selling to develop or developing to sell property for moderately priced housing;
- B. The development will be consistent with the rural nature of the neighborhood and the number of units will not exceed twelve; and
- C. Twenty-five percent (25%) of the gross proceeds will be placed in one or more trust, gift, or endowment funds created to maintain and preserve the Property, buildings and plantings.

Joanne H. Patton hereby certifies that I am unmarried and have no former spouse or civil union partner who occupies or intends to occupy the premises as a principal residence or is entitled to claim the benefit of an existing estate of homestead in the property by court order or otherwise.

**SIGNATURES AND ACKNOWLEDGEMENTS ON FOLLOWING PAGE**

Executed as a sealed instrument effective as of the 17th day of September, 2012.

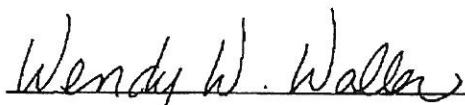


Joanne H. Patton

**COMMONWEALTH OF MASSACHUSETTS**

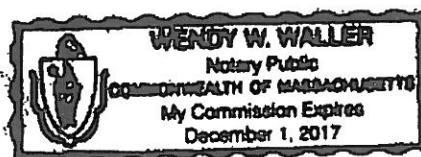
Essex, ss

On this 17<sup>th</sup> day of September, 2012, before me, the undersigned notary public, personally appeared Joanne H. Patton, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/\_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.



Wendy W. Waller

Notary Public  
My Commission Expires:



Executed as a sealed instrument effective as of the 17th day of September, 2012.

Edward H. Ladd  
Edward H. Ladd, Executor  
under the Will of George S. Patton,  
a/k/a George Smith Patton

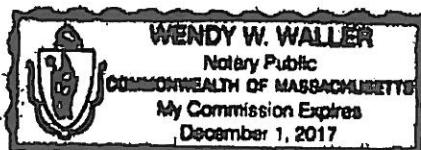
COMMONWEALTH OF MASSACHUSETTS

ESSAY ss

On this 14 day of September, 2012, before me, the undersigned notary public, personally appeared Edward H. Ladd, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/Personal Knowledge (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes, as Executor under the Will of George S. Patton, a/k/a George Smith Patton.

Wendy W. Waller

Notary Public  
My Commission Expires:



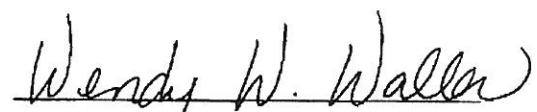
Executed as a sealed instrument effective as of the 17th day of September, 2012.

  
Caleb Loring, III, Executor  
under the Will of George S. Patton,  
a/k/a George Smith Patton

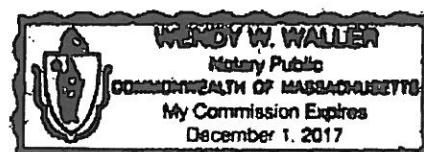
COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 17<sup>th</sup> day of September, 2012, before me, the undersigned notary public, personally appeared Caleb Loring, III, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/\_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes, as Executor under the Will of George S. Patton, a/k/a George Smith Patton.



Notary Public  
My Commission Expires:



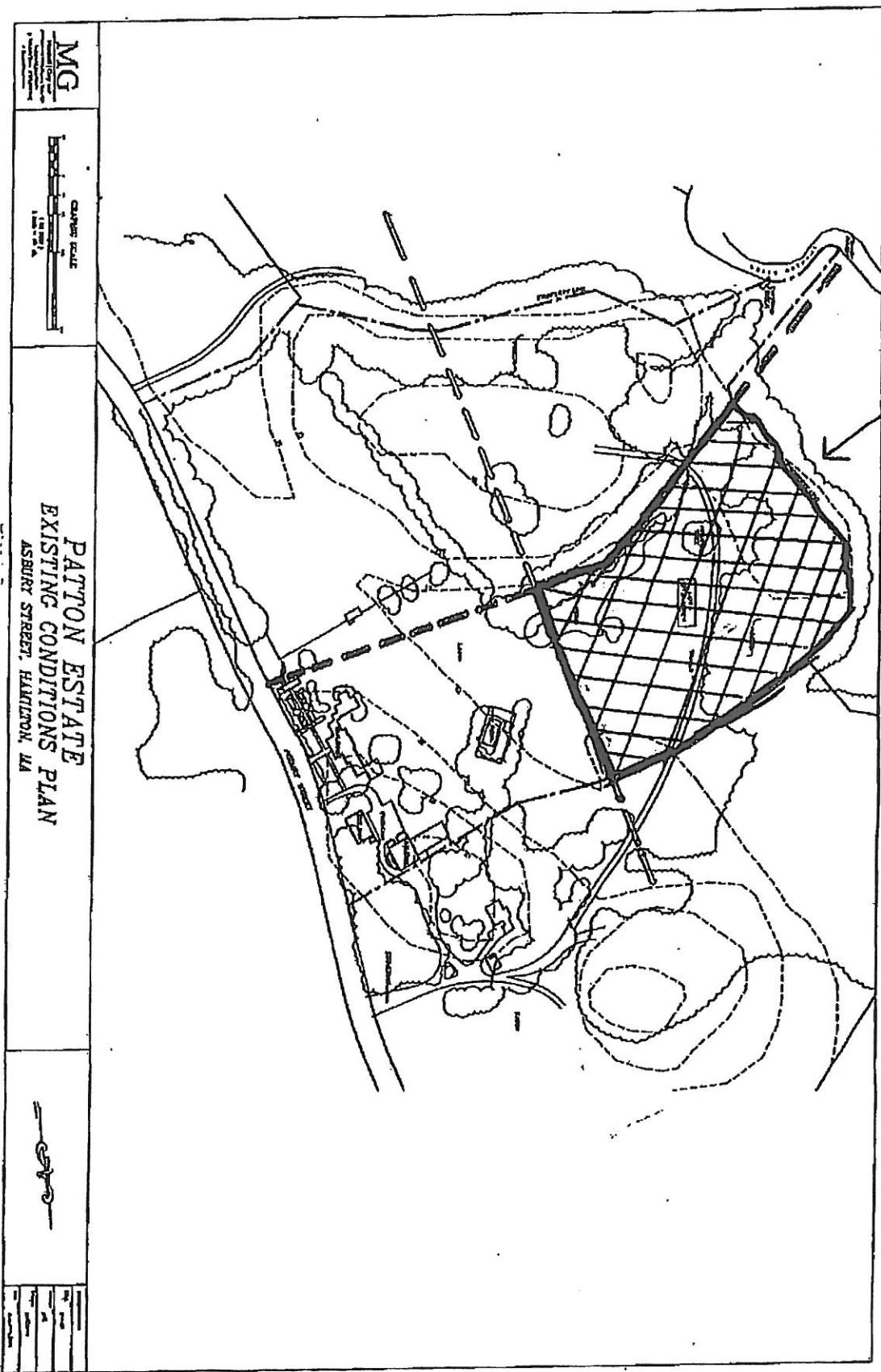
## **EXHIBIT A**

The land with the buildings and improvements thereon situated on the westerly side of Asbury Street, Hamilton, Essex County, Massachusetts, commonly known as and numbered 650 Asbury Street and shown as Lot 4 on a Plan entitled: Plan of Land in Hamilton & Topsfield, MA Prepared For George S. Patton", dated November 12, 1997 (Sheet 1 of 2), prepared by Hancock Survey Associates, Inc., recorded with the Essex South District Registry of Deeds in Plan Book 321, Plan 610.

Said Lot 4 containing an area of 27.20 ± Acres.

Said premises are conveyed subject to and with the benefit of easements and restrictions of record insofar as the same are now in force and applicable.

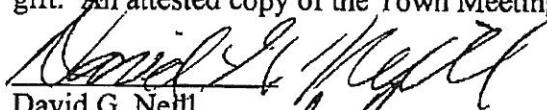
**EXHIBIT B**



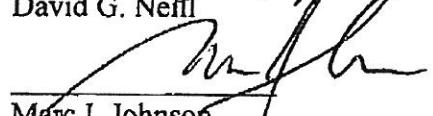
COMMONWEALTH OF MASSACHUSETTS  
ACCEPTANCE OF QUITCLAIM DEED

Essex, ss.

On this 17<sup>th</sup> day of September, 2012, the undersigned, being a majority of the members of the Board of Selectmen of the Town of Hamilton, pursuant to a Vote of the Annual Town Meeting of the Town of Hamilton on May 12, 2012, under Article 5-1, hereby accept on behalf of the Town of Hamilton the attached Quitclaim Deed from Joanne H. Patton and Edward H. Ladd and Caleb Loring, III, Executors under the Will of George S. Patton, a/k/a George Smith Patton, as a gift. An attested copy of the Town Meeting vote is attached hereto.



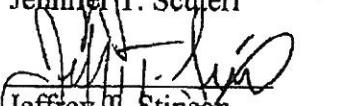
David G. Neill



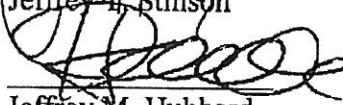
Marc I. Johnson



Jennifer T. Scuteri



Jeffrey T. Stinson

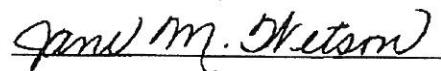


Jeffrey M. Hubbard

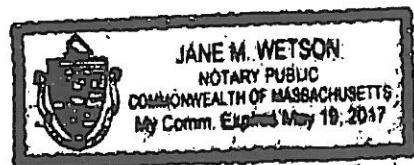
COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 17<sup>th</sup> day of September, 2012, before me, the undersigned Notary Public, personally appeared David G. Neill, Marc I. Johnson, Jennifer T. Scuteri, Jeffrey T. Stinson, and Jeffrey M. Hubbard and proved to me through satisfactory evidence of identification, which was which was        photographic identification with signature issued by a federal or state governmental agency,        oath or affirmation of a credible witness, X personal knowledge of the undersigned, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.



Notary Public  
My Commission Expires:





**TOWN OF HAMILTON  
TOWN HALL  
HAMILTON, MASSACHUSETTS 01936  
978-468-5570**

The following is a certified copy of the motion and vote taken at the Annual Town Meeting of the Town of Hamilton held on May 12, 2012 at 9:00 AM at the Hamilton-Wenham Regional High School.

**A.T.M. May 12, 2012** – Moderator declared a quorum being present (75) and the Warrant returned showing it had been properly served, opened the 219<sup>th</sup> Annual Town Meeting at 9:00 AM with 299 registered voters checked and present.

*The Moderator noted that Articles 5-1 does not require two-thirds votes.*

**ARTICLE 2012/5 5-1      Accept Gift of Patton Homestead**

The Moderator recognized Stacy Carpenter.

Moved by Stacy Carpenter, Patton Family Advisory Committee, duly seconded, that the Town authorize the Board of Selectmen to accept the deed to the town of a gift of land, fee simple interest, to one parcel of land at 650 Asbury Street, Hamilton, Essex County, Massachusetts, being a property known as the Patton Homestead, the parcel consisting of 27.20 ± acres of land, buildings and structures, identified as Map 19, Lot 1 in the records of the Hamilton Assessors, on file with the Town Clerk all on such terms and conditions as are acceptable to the Board of Selectmen.

Stacy Carpenter presented information about proposed gift and spoke to motion.

Moved by Bill Dery, Chebacco Road, duly seconded, moved an amendment that this matter be referred to the Advisory Committee for further study and development of which will include a definitive business plan which has inclusive a zero cost projection and escape clause in the event of failure and it becomes a tax burden.

Bill Dery, Marc Johnson, Peter Clark, Bill Bowler, Essex Street, Forrester Clark, Bridge Street, Mrs. Joanne Patton, Asbury Street, and Zachary Peters, Lake Drive, and Jennifer Scuteri spoke to the motion.

The Moderator called for the vote on Dery's amendment to amend motion to refer to the Advisory Committee for further study.

**VOICE VOTE: MOTION TO AMEND ---DOES NOT PASS**

\*\*\*\*\*

The Moderator called for the vote on the main motion moved by Stacy Carpenter to accept the gift of the Patton homestead. He noted that this required a majority vote.

**VOICE VOTE: MOTION PASSES UNANIMOUSLY**

**A TRUE COPY: ATTEST:**

Jane M. Wetson  
Jane M. Wetson, CMMC  
Town Clerk

Attachment R

# Arborist Report



July 24, 2014

Mr. Alan Berry  
C.P. Berry Co.  
460 Boston St.  
Topsfield, Ma 01983

Dear Mr. Berry,

Thank you for providing the opportunity to inspect the beech trees at the Patton Property in Hamilton. As you indicated, of the three trees on the knoll two are doing well and the smaller, stunted tree on the southeast end of the stand is struggling.

A visual inspection of this tree revealed multiple dead branches, tip dieback and abnormally small foliage in the crown indicating the vascular system is compromised and cannot supply adequate water and nutrients to the branches and leaves. Further inspection of the trunk and scaffold branches revealed abnormal growths, disfiguration, beech bark scale, phytophthora canker and numerous areas of decay infested by carpenter ants. The root flare and buttress roots appear undersized and poorly formed.

Based on this visual inspection it is my opinion this tree is in decline and could die or fail at any time. In addition, it is quite possible the insects and diseases infecting this tree could spread to the other 2 healthier plants compromising them as well. Removal is recommended.

Thank you again for this opportunity and your time and attention.

Sincerely,

A handwritten signature in black ink that reads "Ben Staples". The signature is fluid and cursive, with "Ben" on top and "Staples" below it.

Ben Staples  
ISA Board Certified Master Arborist  
Cicoria Tree Service

Attachment S

# Fire Flow Test Results

**EBACHER COMPANY**

PLUMBING, HEATING &amp; FIRE PROTECTION

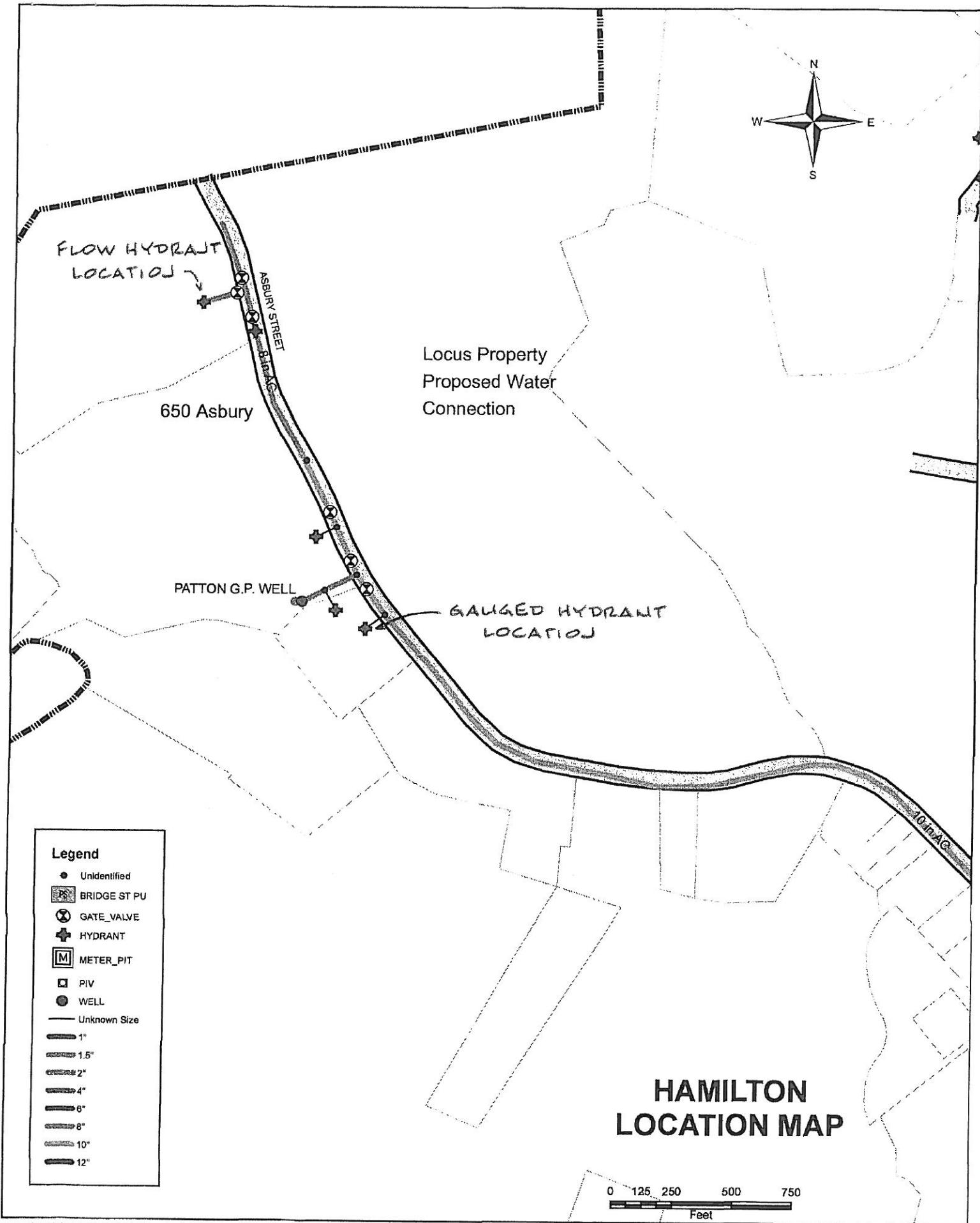
P.O. BOX 548, AMESBURY, MASSACHUSETTS 01913-0013

(978) 388-4086 FAX (978) 388-4208

**HYDRANT FLOW TEST REPORT**PROJECT: 650 ASBURY ST.ADDRESS: HAMILTON, MA-DATE: 5-21-14 TIME: 9:00 P.M.GAUGED HYDRANT LOCATION: ASBURY ST. - SOUTH OF # 650FLOW HYDRANT LOCATION: ASBURY ST. - NORTH OF # 650ON DEAD-END 8" MAINSTATIC: 70 p.s.i. RESIDUAL: 44 p.s.i.PITOT: 15 p.s.i. GALLONS FLOWING 650 g.p.m.HYDRANT COEFFICIENT .9 SIZE/TYPE OF STREET MAIN: 8" ACDIAMETER OF TIP / DEVICE: 2 1/2" DIFFUSER NO. OF OPENINGS: 1

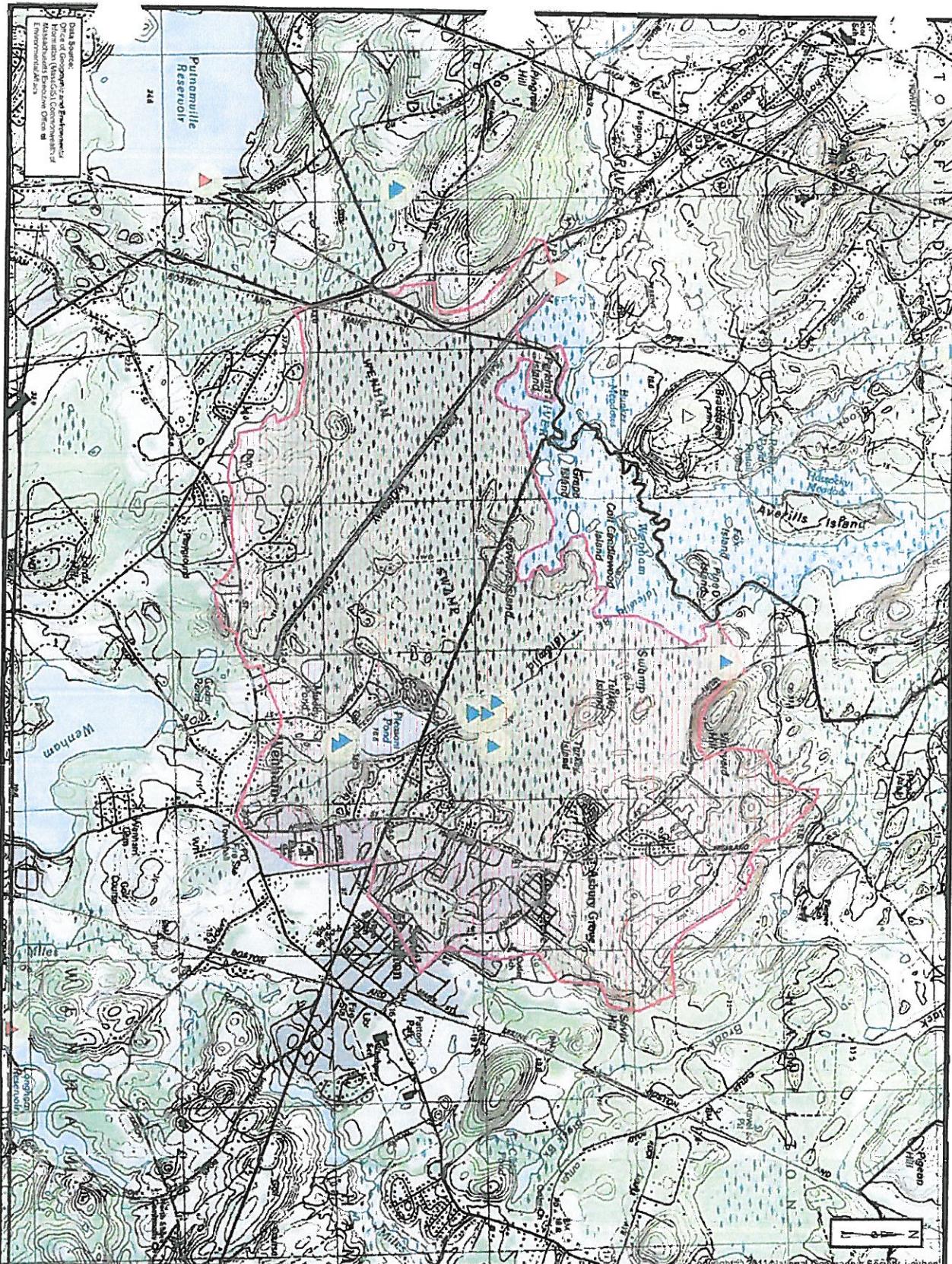
ELEVATION CHANGE FROM GAUGED

HYDRANT TO BUILDING FIRST FLOOR: APPROX. 5'-0"DISTANCE FROM STREET MAIN TO BUILDING: REF. TO SITE PLANTEST PERFORMED BY: JEFF MAZETTA - HAMILTON PUBLIC WORKSTEST WITNESSED BY: SHANE SMITH - EBACHER CO.NOTES & SKETCH: ( SEE ATTACHED HAMILTON LOCATION MAP )



Attachment T

Commonwealth of  
Massachusetts Executive Office  
of Environmental Affairs (EOEA)  
Groundwater Protection 2013  
Zone II Boundary Map



Municipality: Hamilton, MA  
PWSID#: 3119000  
Well Name: Caisson; Idlewood #1 & #2  
Purveyor: Hamilton Water Department  
Source No.: -04G, -05G, -06G, C7G, OG6 Wenham 01G, OG6  
Well No.: N/A  
Program: Drinking Water  
USGS Quad: Salem/ Ipswich/ Georgetown  
Long/Lat: 70 Deg. 53' 48" W, 42 Deg. 37' 6" N  
Consultant: Weston & Sampson  
Date of Study: January 2013

**Date of Study:**  
**Approval Signatures**

Date:

1/30/2013

### Legend

-  Community Ground Water
  -  Community Surface Water
  -  Surface Distribution Site
  -  Non-Transient Non-Community
  -  Transient Non-Community
  -  Proposed Well
  - Zone I
  - Zone II Boundary

Scale = 1" : 2,000'

Attachment U

Legal Opinion Letter from Lisa  
Mead, Esq., Blatman,  
Bobrowski & Mead, LLC

TO: Members of the Planning Board  
Members of the Board of Selectmen

CC: Michael Lombardo, Town Manager

FR: Lisa L. Mead, Special Town Counsel

RE: Proposed Development of Patton Parcel / Legal Authority of the Board of Selectmen to Sell and Develop Same

DA: November 21, 2014

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Reference is made to the above captioned matter. In that connection, I have been retained by the Town to assist the Board of Selectmen in their joint application with CP Berry in the development of housing at the site known as the so called "Patton Property". Specifically, I have been requested to provide an opinion with regard to the following specific issues:

1. May the Board of Selectmen sell a portion of the so called "Patton Property" for the purpose of developing senior housing?
2. May the Board of Selectmen participate as a co-applicant in the permitting process for said proposed development and use a portion of the Patton Property as part of the application?
3. What authority, if any, does the Board of Selectmen have to designate portions of the Patton Property for a particular use?
4. Does the Ground Water Overlay District restrict the number of housing units being proposed for the Patton Property?

In preparing to provide an opinion with regard to the foregoing questions, I have reviewed the May 12, 2012 Town Meeting Minutes, the April 5, 2014 Town Meeting Minutes, the Gift Agreement by and between the Town and the Pattons, the Amended Gift Agreement, the Deed from the Pattons to the Town, the Request for Proposal for the development of senior housing, the Purchase and Sale Agreement resulting from the Request for Proposal, the Zoning Bylaw for the Town of Hamilton and related statutes and reported cases.

### **I Facts**

On May 12, 2012 by a unanimous vote of Town Meeting on Article 5-1, the Town authorized the Board of Selectmen to accept a gift of real property from the Pattons. The Town Meeting vote placed no restrictions on the gift nor did it specify a particular purpose for which the gift must be

used. Indeed, the Town Meeting vote specifically stated the Board of Selectmen may accept such gift upon such terms and conditions that are acceptable to the Board.

The Board of Selectmen then entered into a Gift Agreement with the Patton's whereby the Patton's agreed that once conveyed to the Town, the Board could sell a portion of the property for the purpose of developing moderately priced housing.<sup>1</sup> The Patton's then conveyed the Property to the Town of Hamilton<sup>2</sup> by deed dated September 17, 2012.<sup>3</sup>

The Board of Selectmen issued an RFP for the purchase and development of moderately priced housing on a portion of the property consistent with the Gift Agreement. The selected developer proposes to place twelve units of age restricted moderately priced housing on 4 acres.

On April 5, 2014, Town Meeting,, by a two-thirds vote, approved Article 2-12, which authorized the Board of Selectmen to sell, develop or restrict four (4) acres, more or less, as identified as a portion of Map 19, Lot 1 and as more fully set forth on the plan presented at Town Meeting and to do so on the terms and conditions that the Board of Selectmen determine to be appropriate.

The Board of Selectmen thereafter entered into a Purchase and Sale Agreement with the developer, CP Berry, for the sale of the land and the subsequent construction of 12 units of age restricted moderately priced housing. As part of that proposal, the Board of Selectmen will join in the application for a special permit and will include as part of the application, a portion of land adjacent to the land being sold to CP Berry which said land will serve as open space or park land to fulfill the requirements of the Senior Housing Bylaw.

## **II Analysis**

### **A. Authority of the Board of Selectmen to Sell Property for Senior Housing Development**

The Patton Property was put in the care, custody and control of the Board of Selectmen by the vote of Town Meeting May 12, 2012. The Board through that vote was authorized to enter into an agreement with the Sellers, the Pattons, on the terms that the Board deemed acceptable to the Board. The Board then negotiated the terms which would allow them to sell a portion of the property for moderately priced housing. The Board then sought, and was given, appropriate approval to sell four (4) acres, plus or minus, of the property via a vote at the April 5, 2014 Town Meeting. Indeed, again, the Town Meeting gave the Board the authority to enter into an agreement to sell the land upon terms and conditions the Board determined to be appropriate. In this instance, those terms included joining in with the Developer to submit an application for Senior Housing.

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<sup>1</sup> The initial Gift Agreement located the housing in the so-called northwest portion of the property. However, a subsequent amendment to the Agreement allowed the development of moderately priced housing elsewhere on the property without the need to give the Patton's a right of first refusal.

<sup>2</sup> A conveyance in a deed to the "Town" is tantamount to deeding to the care custody and control of the Board of Selectmen. G.L. c 40 sec. 3.

<sup>3</sup> Subsequent to the Deed being filed, an amendment to the Deed was also made consistent with the Amendment to the Gift Agreement. Said amended deed is dated February 4, 2104 and recorded at the Essex South Registry of Deeds in Book 33209 Page 48.

The initial vote in May, 2012 was taken pursuant to G.L. c. 40 sec. 3 which authorizes the Town to purchase or hold real property:

“A town may hold real estate...and may convey same by a deed of its selectmen...

All real estate...of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen...”

When it assumed the care, custody and control of the property, the Board had the authority to act in a manner which they deemed appropriate according to the Town Meeting vote. Indeed, the Board was required to obtain further authority to sell the property in accordance with G.L. c. 40 sec. 15A and they received that authority in April of 2014 by a vote of the Town Meeting. The Town Meeting directed them to undertake that transaction on terms and conditions which they deemed appropriate.

The Board of Selectmen has full authority to sell the property for the purpose of developing moderately priced age restricted housing.

**B. May the Board of Selectmen participate as a co-applicant in the permitting process for said proposed development and use a portion of the Patton Property as part of the application?**

The Board is responsible for the care, custody and control of the property. The Board may participate as a co-applicant in the proposal from CP Berry and the Board may request a division of the Patton Property to further their proposed sale and development of the property. As noted above, the Board may dedicate portions of the Patton Property for various public uses. The Town Meeting put the property in the Board's care, custody and control.

The Board is serving as co-applicant for two purposes: 1. They own the four (4) acres which is slated to be conveyed to the developer and 2. They own the portion of the proposed development, 9 +/- acres, which will be restricted to open space or park land as required under section V(E)(22)(b) of the Town of Hamilton Zoning Bylaw. As a result the entire 13+/- acres will be a part of the special permit application and subject to the conditions of the special permit.

Further, given that there was no restriction on a specific purpose for the use of the land, the Board is given wide latitude in putting the property to use for general or specific municipal purposes, which they deem appropriate. It has been firmly established that a town cannot put park land or other property dedicated for specific public use to another use, or sell or lease it, unless it receives authority to do so from the State Legislature. *See Needham v. Norfolk County Commissioners*, 324 Mass. 293 (1949); *Loomis v. City of Boston*, 331 Mass. 129 (1954); *Brookline v. Metropolitan District Commission*, 357 Mass. 435 (1970) Land which is held by a city or town in

a private capacity, however, is not subject to the unrestricted authority of the legislature. *See Higginson v. Slattery*, 212 Mass. 583 (1912) (where city had never formally dedicated area as parkland, city could use or transfer property for different purpose without having to seek legislative approval, since it's held absolute rights over the land which "no person can derive it of") *See also Muir v. City of Leominster*, 2 Mass App 587 (1974) (public lands devoted to public use cannot be diverted to another inconsistent public use without plain and exclusive legislation authorizing that diversion applies only to lands which are in fact devoted to one public use)

Here, the land was not devoted to any particular public use, and therefore the Board of Selectmen have broad authority to designate and/or use the property in any manner it feels fulfills the intent of the Town meeting vote. Indeed, the Appeals Court, in a recent decision, reiterated the considerable breadth of such authority: "G.L. c. 40, section 3...is broad enough to encompass [a] board's ability to execute the town's intent with a certain degree of flexibility." *Faneuil Investors Group Ltd. Partnership v. Bd. of Selectmen of Dennis*, 75 Mass. App. Ct. 260, 268-269 (2009).

Therefore, in this case, the Board is acting wholly consistent with the authority they were provided by Town Meeting, and there is nothing prohibiting the Board from being a co-applicant nor is there any prohibition on the Board using a portion of the Town Land and dedicating it to either open space or park land.

**C. What authority, if any, does the Board of Selectmen have to designate portions of the Patton Property for a particular use?**

As noted above, the Board has full authority to designate portions of the Patton Property to uses which would be considered general municipal uses and which of course are consistent with the deed into the Town. Here the dedication of a portion of the land for open space or parkland is in fact entirely consistent with the overall concept of the Patton Property and related uses in the area. The mere fact that the dedication is in relation to an application the negotiations of which the Board was authorized to undertake as part of the sale, does not negate the Board's authority, nor do they need any further authority.

**D. Does the Ground Water Overlay District restrict the number of housing units being proposed for the Patton Property?**

The proposed development is located in the Residence-Agricultural Zoning District. Senior Housing may be constructed in this district by issuance of a Special Permit from the Planning Board. Additionally, the Property is located within the Groundwater Protection Overlay District ("GPOD"). The question comes as to the applicability of the provisions of the GPOD on the proposal and how the requirements of the GPOD interplay with the Special Permit criteria for Senior Housing and the allowed uses in the underlying district. Specifically, a question has arisen as to the requirement in section V(D)(4)(a) which provides "Regardless of the minimum lot size of the underlying zone, there shall be a minimum lot area of 80,000 square feet for a building lot in the

Ground Water Protection Overlay District.” The term “lot” is defined in the bylaw in section VII as “Lot: Shall mean an area of land in one ownership with definite boundaries, used, or available for use, as site for one or more buildings.”

In the case at hand there are two lots which are part of the proposal, one at 4.5 +/- acres and one at 9 +/- acres. The Senior Housing Permit allows for a base number of one dwelling per acre with density bonuses based upon a number of other factors. In this case as part of a special permit for the RA district under Senior Housing the minimum lot size would be one acre. Nonetheless, given the applicability of the GPOD, the minimum lot size would be 80,000 sq. ft. and the proposal exceeds that requirement. Further, the GPOD does not prohibit greater density on a lot of 80,000 square feet nor does it speak to density at all. As a result, by the very language of the GPOD, “uses or activities permitted in the underlying district are controlled by the underlying district” allowing the property to be used for Senior Housing in accordance with the bylaw, does not conflict with the requirements of the GPOD so long as the lot is greater than 80,000 square feet. To impose any other meaning on the word “lot” in the GPOD would be interpreting the bylaw in a manner inconsistent with the terms thereof. One must give plain meaning to the terms of a bylaw and not try to contort it to mean something not intended by the legislative body. (See Halebian v. Bervy, 457 Mass. 620 (2010): In interpreting a statute, “[w]e begin with the language of the statute.” Commonwealth v. Raposo, 453 Mass. 739, 743, 905 N.E.2d 545 (2009). We give effect to each word and phrase in a statute, and seek to avoid an interpretation that treats some words as meaningless.) If the Town wanted to control density and except certain allowed uses in the underlying district from the GPOD, the Town would have done so, they have not. Further, if the Town meant to limit the number of buildings on a lot in the GPOD, they would have specified same in the bylaw itself, they did not. The GPOD limits the size of a lot in the GPOD and further limits what can happen on that lot in section 6 of the GPOD. Nowhere in those limitations are there limits on the number of units on a lot. As such, a meaning different than what is evident from the plain meaning of the bylaw may not now be imposed in the implementation of the bylaw. The proposal to place twelve units in six buildings on a lot in the R-A district, pursuant to a Senior Housing Special Permit is fully consistent with and not violative of the provisions and prohibitions of the GPOD.