151 Pauline Street Response from Town Attorney

You have requested an opinion as to the source of the Town's title to the property at 151 Pauline Street (the "Premises") and whether the title to the Premises is subject to any res trictions which would affect the Town's use of the Premises for future re-development plans. The Premises is currently the site of the school auditorium and the skating rink. Questions have been raised that the Premises may be a portion of the land described in the "so-called Donation Deed" to the Town from Augusta P. Ingalls, Frank W. Tucker, Jennie E. Tucker Clarence S. Eldridge, and Evelyn M. Eldridge dated November 24, 1902, recorded with Suffolk County Registry of Deeds in Book 2869, Page 150 (the "Ingalls Deed"), which became known as Ingleside Park, and therefore must be used for the same purposes as Ingleside Park. However, upon my review of the title research performed by our title examiner, Marsh, Moriarty, Ontell & Golder, P.C., it is my opinion that the source of the Town's title to the Premises is not from the Ingalls Deed, but rather is from Deeds to the Town from the Cummings family describing a certain parcel of land bounded by Pauline Street containing approximately 7.55 acres as follows:

1. Deed from Edward A. Cummings and Horace S. Cummings, dated November 18, 1872, recorded with said Deeds in Book 1135, Page 272;
2. Confirmatory Deed from Harriet B. Cummings as Guardian of Willis B. Cummings and Alice M. Cummings, dated February 4, 1881, recorded with said deeds in Book 1515, Page 408; and
3. Confirmatory Deed from Harriet P. Cummings dated February 4, 1881, recorded with said Deeds in Book 1515, Page 409 (the "Cummings Deeds").

Copies of the Exhibits and Deeds are attached.

<u>Title to the Premises</u>

In reviewing the description of the land in the Ingalls Deed it appears that the Ingalls land is situated northerly of the Premises. Please refer to the Atlas Plan titled Exhibit A Plan as it shows the approximate location of the boundaries of the land in the Ingalls Deed in yellow. The Ingalls land is not bounded by Pauline Street at all. In fact the southerly border of the Ingalls land is described as being by the land of the Town of Winthrop to land of Samuel Wheelock, who was a northerly abutter of 141 Pauline Street. Also when reviewing the Ingalls Deed the Ingalls' land bounds along the land described in the title to 141 Pauline Street, which has already been examined by our title examiner, thereby further confirming the location of the Ingalls land, as being north of the Premises. Furthermore, it is important to note that at the time of the Ingalls Deeds in 1902, the Town of Winthrop had already acquired the land described in the Cummings Deeds in 1872. To further support that the Town owned the Premises prior to the Ingalls Deed in 1902, I refer to the plan dated June 1896, recorded in Book 2400, End where the Town of Winthrop is shown as the owner of the Premises.

When examining the Cummings Deed I find that the land is described as being bounded westerly and northerly by land of Samuel Ingalls and is bounded southerly by a street laid out by the Town of Winthrop, which is now known as Pauline Street. This description confirms that the

Ingalls land is north of the Premises and was not part of the land included in the Ingalls Deed. In addition the bounds of the Cummings land match the boundaries of the land at 141 Pauline Street which confirms the location of the Premises. Therefore, based upon the description in the Ingalls Deed, the Cummings Deed and the title to 141 Pauline Street, it is my opinion, the source of the Town's title to the Premises is the Cummings Deed.

Use of the Premises

In reviewing whether the Town may use the Premises for its future re-development plans or if it must be used for park purposes, I researched the records at the Suffolk County Registry of Deeds and found that there were no Town Meeting votes recorded evidencing the purposes for which the Premises is to be used and the Town is unable to provide any such documents of Town records. In addition there are no restrictions included in the Cummings Deeds requiring the Premises to be used for any specific purpose. I have been advised by the Town that the Premises were vacant for some time and a portion used as a playground. However, the Middle School and auditorium and gymnasium had been built on this site and then subsequently the skating rink was constructed on a portion of the property. This Premise therefore has been used for multiple purposes, including school and recreational purposes. In addition it is important to note that the Premises have not been maintained as a park or open space but rather has had school and recreational buildings constructed on the Premises.

I have been informed by the Town that the buildings on the Premises are currently under the control and responsibility of the Town Manager's office and the Recreation Department is currently managing any activity in the former school building, auditorium and gymnasium. The Rink building is managed by the Town Rink Manager. When the School Buildings were being used for school purposes, then the School Department had control of the buildings and site.

In considering whether Article 97 of the Amendments to the Massachusetts Constitution is applicable to the Premises and whether any use or disposition of the land will trigger the requisite approvals pursuant to Article 97, one must consider the purpose of Article 97 which is "… The people shall have the right to clean air, and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest water, air and other natural resources is hereby declared to be a public purpose." Article 97 further provides "Land and easements taken or acquired for such purposes shall not be used for other purposes otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court." In essence, Article 97 provides that if a municipality acquires land for a purpose protected under Article 97, it may not convey that land or change its use without a two-thirds roll call vote of each house of the Legislature.

For many years, there was little case law on the question of Article 97 applicability. Recently the Courts have addressed this question as to whether Article 97 applies to property originally acquired or taken for Article 97 purposes. This was clarified in Mahajan V. Department of Environmental Protection, 464 Mass. 604 (2013): "The critical question to be answered is not whether the use of the land incidentally serves purposes consistent with Art. 97. Or whether the

land displays some attributes of art. 97 land, but whether the land was *taken for those purposes*, or subsequent to the taking was designated for those purposes in a manner sufficient to invoke the protection of art. 97." Mahajan, 464 Mass. at 615 (emphasis in original). It was clear after the Mahajan case that property originally acquired for a purpose by Deed or a Taking other than those protected by Article 97 could be later designated as Article 97 property.

Mahajan also restricted the application of Article 97. According to Mahajan, for land to be subject to Article 97, the primary purpose for which the land is acquired, taken or dedicated must be a purpose that serves the "stated goals of art. 97"- that is, conservation of the environment and natural resources. Id. At 615. In the recent decision of Smith v. City of Westfield, 478 Mass. 49, the Supreme Judicial Court decided "The clear and unequivocal intent to dedicate public land as a public park must be more than simply an intent to use public land as a park temporarily or until a better use has emerged or ripened…Rather, the intent must be to use the land permanently as a public park, because the consequence of a dedication is the general public for whose benefit a use in the land was established…obtains an interest in the land in the nature of an easement, " Lowell, 322 Mass. at 730 and "upon completion of the dedication it becomes irrevocable." Id. At 57.

In both Mahajan and Smith it is clear that the Town as the landowner needs to show intent to use the land for a specific purpose protected under Article 97 and then to permanently use the property for the Article 97 purposes. In this case there is no evidence of any recorded instruments showing intent to acquire or use the Premises for Article 97 purposes, which is not necessarily required by the Smith Decision, but there is no evidence of intent to permanently preserve the use of the property for Article 97 purposes. Rather in this case, the Premises are used for different purposes, and the Town has even constructed a school auditorium, gymnasium and skating rink on the Premises, which certainly are not preserving the natural resources of the Premises as intended by Article 97. Therefore, I conclude in my opinion that the Premises are not subject to Article 97 and that the Premises are not subject to Article 97.

Mac Kenzie of said Boston, the receipt whereof is hereby acknowledged do hereby assign, transfer and set over unto the said Alexander Mac Kenzie, the said mortgaged real estate thereby conveyed and the note and claim thereby secured. To have and to hold the same to the said Alexander Mac Kenzie and his heirs and assigns to their own use and behoof forever, subject nevertheless to the conditions therein contained and to redemption according to law. In witness whereof I hereto set my hand and seal this fourteenth day of November A D 1872

Joseph S. Paget and a seal. Signed and sealed in the presence of J D Fellow. Commonwealth of Massachusetts Suffolk ss November 14th 1872 Then personally appeared the above named Joseph S. Paget and acknowledged the foregoing instrument to be his free act and deed before me J D Fellow, Justice of the Peace. November 22 1872 at Nine O'clock and forty five minutes A M Received, Entered and Examined. ~~J D Fellow Comptr Reg~~

Cummings deed to Town of Winthrop

Know all Men by these Presents That Edward P. Cummings of Newburyport, County of Essex and State of Massachusetts and Horace S. Cummings of Washington, District of Columbia, as principals and Geo H. Georg and Geo W. Clark as sureties, are holden and firmly bound and obliged unto Town of Winthrop County of Suffolk and State of Massachusetts in the full and just sum of five thousand dollars to be paid unto the said Town of Winthrop or assigns to which payment well and truly to be made, they bind themselves their heirs, executors and administrators, firmly by these Presents. Witness our hands and seals. Dated the seventh day of December in the year of our Lord one thousand eight hundred and seventy two. The condition of this obligation is such, that whereas the said Edward P. Cummings and Horace S. Cummings have this day bargained and sold unto the said Town of Winthrop, for the sum of three thousand and thirty dollars, a certain lot or parcel of land situated in the Town of Winthrop, County of Suffolk and State of Massachusetts. Beginning at a stake on land of James Ostardelle and bounded Southerly by a street now laid out by the Town of Winthrop, one thousand and fifty nine feet. Westerly by land of Samuel Ingalls one hundred and

eighty three feet and two inches Northerly by said Ingalls six hundred and sixty two feet and five inches and by land of David Belcher five hundred and four feet to a stake Westerly by land of Samuel Belcher two hundred and sixty two feet and five inches: then through a pond about one hundred and forty four feet: then easterly by land of James Blaisdell one hundred and thirteen feet to the beginning. Said land being a portion of the farm of the late John S Tewksbury and containing about seven acres and fifty five hundredths of an acre. And whereas it is agreed by the parties hereto, that the said Town of Winthrop, his executors and administrators shall pay to the said E O and H S Cummings, their executors, administrators or assigns the said sum of three thousand and twenty dollars as follows viz: On the delivery of a good and warranty deed of the above described land conveying a perfect title thereto, and until such delivery, the town shall pay the interest on the sum of three thousand and twenty dollars semi-annually at the rate of seven per cent per annum and the town shall have full possession of said land upon the execution of this Bond, with the right to take and use any gravel that may be found on the premises. Now therefore if the said Edward O and Horace S Cummings shall deliver unto the said Town of Winthrop a good and warranty deed of the above described land conveying a perfect title thereto, within a reasonable time after the decease of their mother (until which event they are unable to execute a warranty deed of the same) the said Town of Winthrop making demand for the same and fulfilling all the conditions herein stipulated then this Obligation to be void, otherwise to remain in full force and virtue Edward O Cummings Horace S Cummings Geo H Gong, G. H Clark and each a seal Executed in presence of J A Adams Commonwealth of Massachusetts Essex ss Nov 18th 1892. Then personally appeared the within named Edward O Cummings and acknowledged the within written instrument to be his free act and deed, before me F. D Burnham Justice of the Peace November 22. 1892 at eleven o'clock and twenty seven minutes A M. Received Entered and Examined

F D Burnham Rec

2869
150

and seals this twenty second day of November in the year one thousand nine hundred and two. Samuel Duehinsky his + mark and a seal. Rebecca Duehinsky and a seal. Signed sealed and delivered in presence of Wm. Rotter to mark of S. D. Commonwealth of Massachusetts Suffolk ss Boston November 22 1902. Then personally appeared the above named Samuel Duehinsky and acknowledged the foregoing instrument to be his free act and deed Before me Wm. Rotter Justice of the Peace _____ December 9 1902 at eleven o'clock and twenty minutes A. M. Received Entered and Examined. [illegible]

MacDonald Deed to Sullivan

Re name Mpu

City of Boston Collecting Department. City Hall. I hereby certify that there has this day been paid to the City Collector of the City of Boston the sum of Fifty five and 45/100 Dollars by Patrick Callahan Nos. of Bostn Mass. as the amount which the owner is required to pay to the purchaser to redeem a certain piece of land sold by deed of the City Collector of said City for the taxes assessed on said land for the year 1901 to Meyer Dana and Louis Lemm said deed being recorded in Suffolk Registry of Deeds Book [illegible] page [illegible] and said land being bounded as follows: Northerly about One thousand five hundred and seventy five (1575) feet of land numbered 27 Vernon Street Ward 12 Signed this 9th day of Dec. 1902 James P. Kelly Acting City Collector December 9 1902 at eleven o'clock and twenty minutes A. M. Received Entered and Examined. [illegible]

Ingalls etc to Tower Winthrop

1902 Donation Deed from Ingalls family

Know all men by these Presents That we Augustus P. Ingalls Frank W. Tucker Jennie E. Tucker his wife in her right Clarence S. Eldridge Evelyn M. Eldridge his wife in her right all of Winthrop in the County of Suffolk and Commonwealth of Massachusetts Edward B. Atwood and Caroline S. Atwood his wife in her right of Daytona in the State of Florida in consideration of one dollar paid by the Town of Winthrop in said Commonwealth the receipt whereof is hereby acknowledged do hereby remise release and forever quitclaim unto the said Town of Winthrop a certain parcel of land situated in said Winthrop bounded and des-

ended as follows: Beginning at a point on the Easterly side of Pleasant Street said point being distant in a Northerly direction three hundred three & 60/100 feet from a stone bound placed at an angle in said Pleasant Street opposite the end of Court Road and running by a curved line first in a Southeasterly then Easterly then Northeasterly then Northerly and Northwesterly distance seventeen hundred & 91/100 (1700.91) feet to a point on Lincoln Street near the Southerly end of Beal Street thence Easterly on said Lincoln Street three hundred forty three (343) feet to land of the Boston Revere Beach and Lynn Railroad Company thence running Southerly by land of said Railroad Company seven hundred seventy five (775) feet to land of said Town of Winthrop thence running Southwesterly by said Town's land two hundred forty five (245) feet to land of Samuel Wheelock thence Northwesterly by land of said Wheelock fifty nine (59) feet thence by the middle of a ditch running in a Northwesterly then Westerly and then Southwesterly direction to the Northwesterly corner of said Wheelock's land said ditch being the boundary line between land of said Wheelock and these grantors four hundred seventy eight (478) feet thence running Southerly by land of said Wheelock one hundred third (103) feet to the northerly boundary of Palmyra Street thence running Southwesterly by the northerly boundary of Palmyra Street three hundred sixty five & 5/100 (365.05) feet thence running Northerly on lot 67 shown on a plan made by No. T Whitman June 1896 recorded with Suffolk Deeds book 2000 at the end ninety (90) feet thence running Northwesterly by lots 68 and 69 on the plan last mentioned one hundred forty six & 1/100 (146.01) feet thence running northerly on land now or late of Lucian B. Thompson Emma G. Johnstone Lawson E. Jones and Alice E. Robinson one hundred five (105) feet thence running northwesterly on land now or late of said Robinson forty eight (48) feet thence running about westerly on land now or late of said Robinson eighty (80) feet to said Pleasant Street thence running northerly by said Pleasant Street one hundred twenty one & 60/100 (121.60) feet to the point of beginning being of said

made or suffered by us except as aforesaid and that we will and our heirs executors and administrators shall warrant and defend the same to the said grantee forever against the lawful claims and demands of all persons claiming by through or under us but against none other. In Witness whereof we the said Augusta P. Ingalls wife of Frank W. Tucker Jennie E. Tucker Clarence S. Eldridge Evelyn M. Eldridge Edward E. Atwood and Caroline S. Atwood hereto set our hands and our common seal this twenty fourth day of November in the year one thousand nine hundred and two. Augusta P. Ingalls. Frank W. Tucker Jennie E. Tucker Clarence S. Eldridge Evelyn M. Eldridge Edward E. Atwood Caroline S. Atwood and a seal. Signed and sealed in presence of Commonwealth of Massachusetts. Suffolk ss. December 2d 1902 Then personally appeared the above named Jennie E. Tucker and acknowledged the foregoing instrument to be her free act and deed. Before me Howard E. Barlett Justice of the Peace. Received Dec 2 1902 at twelve o'clock and fourteen minutes P.M. Received Entered and Examined

Know all men by these Presents That I Nelson Loutts of Boston in the County of Suffolk and Commonwealth of Massachusetts in consideration of One dollar and other good and valuable consideration paid by Joseph H. Devenny and Eva M. Murphy wife of Miles P. Murphy all of said Boston the receipt whereof is hereby acknowledged do hereby give grant bargain sell and convey unto the said Joseph H. Devenny and Eva M. Murphy and their heirs and assigns forever a certain tract or parcel of land with the buildings thereon in that part of said Boston formerly Dorchester being lot thirty eight (38) on a revised plan of that part of Blue House Lots belonging to Haddock & McDowell recorded in Suffolk Deeds at the end of book 2795 which is designated as lots thirty six (36) thirty eight (38) and forty (40) said revised plan is the property of Haddock

Nelson Loutts
To
Devenny et al

1515 - 408

Know all men by these Presents

Cummings to Town of Winthrop

That whereas I Harriet B. Cummings of Newburyport in the Commonwealth of Massachusetts, as Guardian of Willis B. Cummings and Alice M. Cummings, minors and children of Edward P. Cummings late of Newburyport, by virtue of a license granted to me on the tenth day of January last by the Probate Court for the County of Essex in said Commonwealth have sold the real estate of the said minors hereinafter described at private sale, to the Town of Winthrop in the County of Suffolk and Commonwealth of Massachusetts, for the sum of Seven hundred and sixty dollars. Now therefore in consideration of the said sum of Seven hundred and sixty dollars to me paid by the said Town of Winthrop, the receipt of which sum is hereby acknowledged, I do, as guardian as aforesaid and by virtue of the aforesaid license, hereby grant, bargain, sell and convey unto the said Town of Winthrop, its successors and assigns, all their land, situate in the Town of Winthrop aforesaid, known and described as the interest of said minors as heirs at law of Edward P. Cummings in the undivided one half of land bounded and described as follows: Beginning at a stake and stone on land of James Blaisdell and bounded southerly by a street now laid out by the Town of Winthrop one thousand and fifty nine feet westerly by land of Samuel Ingalls one hundred and eighty three feet and two inches; northerly by said Ingalls six hundred and sixty two feet and five inches and by land of David Belcher two hundred and four feet; northeasterly by land of Samuel Belcher two hundred and sixty two feet and five inches. thence through a pond about one hundred and forty four feet; easterly by land of James Blaisdell one hundred and thirteen feet to the beginning. said land being a portion of the farm of the late John S. Tewksbury and containing about seven acres and fifty five hundredths of an acre. The street above mentioned is now known as Pauline street. To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said Town of Winthrop, its successors and assigns, to their own use and behoof forever. And I hereby covenant with the grantee, and its successors and assigns, that I am the duly appointed and legal guardian of the said minors: that the license aforesaid, was granted by a court of competent jurisdiction: and that I have in all respects

complied with the decree of said Court authorizing said sale.
In witness whereof, I hereto set my hand and seal, this fourth day of February in the year one thousand eight hundred and eighty one. Harriet B. Cummings and a seal. Signed and sealed in presence of — Commonwealth of Massachusetts, Essex ss. February 4th 1881. Then personally appeared the above named Harriet B. Cummings and acknowledged the foregoing instrument to be her free act and deed. Before me, Amos Noyes, Justice of the Peace. February 10. 1881 at twelve o'clock and forty minutes P.M. Received, Entered and Examined.

Attest Thos. Temple Reg

Know all Men by these Presents

That I Harriet B. Cummings daughter of the late Edward P. Cummings and of Harriet B. Cummings, his wife, of Newburyport, being a single woman, in consideration of Three hundred and eighty six dollars paid by the Town of Winthrop in the County of Suffolk and Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said Town of Winthrop, its successors and assigns, all that undivided one sixth part which I have inherited from my father Edward P. Cummings of certain land, situate in said Town of Winthrop bounded and described as follows: Beginning at a stake and stone on land of James Blaisdell and bounded southerly by a street now laid out by the said Town of Winthrop one thousand and fifty nine feet; westerly by land of Samuel Ingalls one hundred and eighty three feet and two inches; northerly by said Ingalls land six hundred and sixty two feet and five inches and by land of David Belcher two hundred and four feet; northeasterly by land of Samuel Belcher two hundred and sixty two feet and five inches; thence through a pond about one hundred and forty four feet; easterly by land of James Blaisdell one hundred and thirteen feet to the beginning. Said land being a portion of the farm of the late John T. Tewksbury and containing about seven acres and fifty five hundredths of an acre. To have and to hold the granted premises with all the privileges and appurtenances thereto belonging to the said Town of Winthrop, its successors and assigns, to their own use and behoof forever. And I do hereby for myself, and my heirs, executors and administrators covenant with the said grantee,

Cummings to Town of Winthrop

and its successors and assigns, that I am lawfully seized in fee simple of the granted premises: that they are free from all incumbrances, made or suffered by me: that I have good right to sell and convey the same as aforesaid: and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said grantee and its successors and assigns forever, against the lawful claims and demands of all persons. And for the consideration aforesaid, I Harriet B. Cummings, widow of said Edward P. Cummings and also of the sum of Three hundred and twenty two dollars, do hereby release unto the said grantee and its successors and assigns, all right of or to both dower and homestead in the granted premises. In witness whereof, we, the said Harriette E. Cummings, single woman, and the said Harriet B. Cummings, widow, hereunto set our hands and seals, this fourth day of February in the year one thousand eight hundred and eighty one. Harriette E. Cummings, Harriett B. Cummings and each a seal. Signed, sealed and delivered, in presence of:- Commonwealth of Massachusetts, Essex ss Feb 4th 1881. Then personally appeared the above named Harriette E. Cummings and acknowledged the foregoing instrument to be her free act and deed: before me, Amos Noyes Justice of the Peace. February 10. 1881 at twelve o'clock and forty minutes P.M. Received, Entered & Examined. [illegible] Reg.

Commonwealth of Massachusetts.

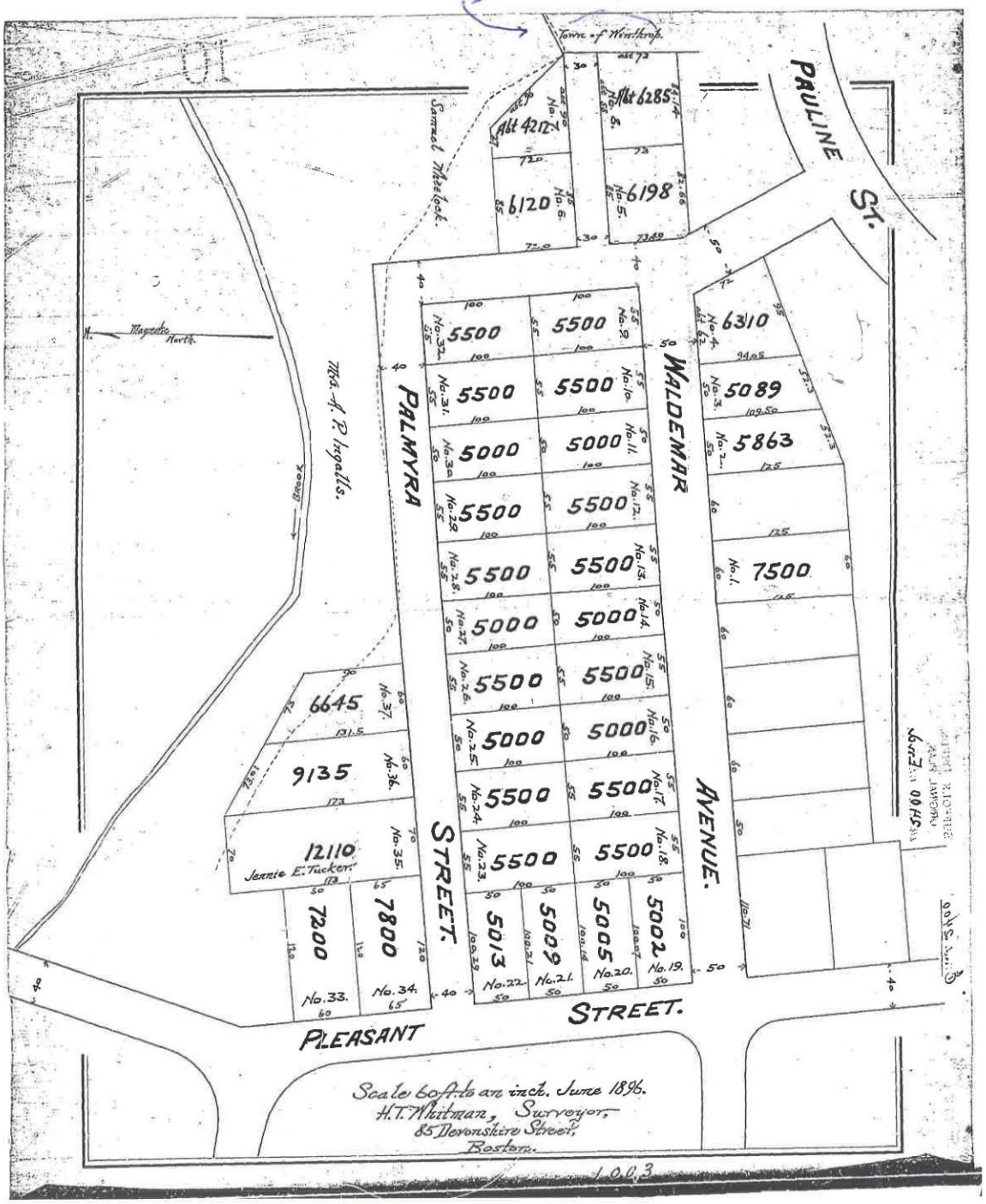
Thorndike's list by Wall

I, Henry Wall of Medford in the county of Suffolk on oath declare and verify that the account hereinafter set forth is a correct statement of a just and true account of the amount due me with all just credits given for the labor performed and furnished and the materials furnished and actually used in the erection of a building hereinafter described and owned by Wm. H. Thorndike of Boston in our county of Suffolk. Said labor was performed and furnished and said materials were furnished by virtue of a written agreement made by me with one Charles J. Lord who had authority from and was rightfully acting for said owner in procuring and furnishing such labor and materials by and with the consent of said owner. And I verify that I ceased to labor on and furnish materials for said building on the 12th day of January 1881. Said lot of land and the property intended to be covered by this

Exhibit A
Plan
Deed
Book 2869 p158
By August Ingalls
et al
Power of Attorney
Ingalls
Deed Book 1869-150
Ingalls Deed
Book 1/3
p 170
(See survey
1970-2010)
Deed
Conveyance
Previously owned
By Ingalls
775' Ra
to Land
of
Mun
of
Winthrop
Thence
SW
245'
to
Land
of
Summer
Wheeler
141
Pavine
St
Cove Road
Lincoln
Brookfield
Bolton
Beach
Ingleside
Enfield
Edgehill
Brookfield
Palmira
Waldemar
Pauline
Bartlett
Birch
Circuit
Road
Ave.
St.
Road
Ave.
Boston
Beach
Lynn
Ave.
Ave.
Ave.

Exhibit B Plan

2400 - End



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