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August 12, 2021

Via Email and Overnight Mail

Donald Gentile, Chair
Lynnfield Conservation Commission
55 Summer Street
Lynnfield, MA 01940

RE: Bryan Last, 0 and 36 Elmwood Road

Dear Chairman Gentile and Commission:

Our office represents Bryan Last, owner of the properties located at 0 and 36 Elmwood Road, which are on opposite sides of the end of Elmwood Road abutting Pillings Pond. Mr. Last has been in touch over the past months with Emilie Cademartori about an issue that has arisen regarding his ownership of the land located along the Pond at the termination of Elmwood Road.

In order to assist in clarifying this property issue, our office conducted a title search from 1917 to the present. Currently, Mr. Last owns the properties located at 0 and 36 Elmwood Road by way of a Quitclaim Deed, recorded on April 29, 2016 at the Southern Essex District Registry of Deeds, Book 34884, Page 214 ("Last Deed," Exhibit A, attached). The Deed divides the property into Parcel 1 and Parcel 2. Parcel 1 is 36 Elmwood Road and is comprised of Lots 139, 140, 141, 142, 143, and 144. Parcel 2 is 0 Elmwood Road and is comprised of Lots 145, 146, and 147.

The Last Deed describes the lots by reference to a subdivision plan entitled "Section 'A' LAKEWOOD in Lynnfield, Mass, dated April 24, 1928, and recorded with the Essex South District Deeds, Plan Book 54, Plan 7 (see "Subdivision Plan," Exhibit B, attached). The lots described above on either side of Elmwood Road are clearly depicted in the Subdivision Plan.

The Last Deed describes Parcel 1 (36 Elmwood) in part as "Northeasterly...by Pillings Pond, 109 feet, more or less." The Deed further describes Parcel 2 (0 Elmwood) as "Northeasterly...by Pillings Pond as shown on said plan." Based on this Property description, it is clear that Mr. Last's properties extend to the Pond.

As stated, our office conducted the title search beginning in 1917. At that time, Parcels 1 and 2, 36 and 0 Elmwood Road, were combined with other properties on a deed containing 40 acres. In 1917, Frank J. D. Barnjum transferred to Olive Barnjum this large combined lot, which deed was recorded on January 17, 1917 in the Southern Essex Registry of Deeds at Book 2355, Page 132. Olive Page (f/k/a Olive Barnjum) then transferred this property to Samuel B. Donovan, which deed was recorded on March 29, 1928 in the Southern Essex Registry of Deeds at Book 2759, Page 465.

The 1928 Subdivision Plan was then created, as described above, and recorded on April 24, 1928. Once the subdivision was created, Samuel B. Donovan transferred to Mildred Elliott Parcel 1, 36 Elmwood Road (Lots 139, 140, 141, 142, 143, and 144), which deed was recorded on May 18, 1933 in the Southern Essex Registry of Deeds at Book 2951, Page 585. Samuel B. Donovan transferred Parcel 2, 0 Elmwood Road (Lots 145, 146, and 147) to Mildred Elliott, which deed was recorded on November 18, 1942 in the Southern Essex Registry of Deeds at Book 3319, Page 24.

The 1933 and 1942 deeds, described above, for 36 and 0 Elmwood were combined into one deed when Earle R. Elliott, Executor under the Will of Mildred Elliott, conveyed Parcels 1 and 2 to Earle R. Elliot, Lunbert W. Elliott, and Irene E. Elliott, which deed was recorded on September 11, 1963 at the Southern Essex Registry of Deeds at Book 5102, Page 488. Mr. Last eventually took ownership of the property by way of this combined deed.

Upon information and belief, the area where the Pond is now originally consisted of a meadow and brook, and was privately owned by the Pillings family, who used it as a cider mill in the 1800s. As a result of the nonpayment of taxes by an owner unknown, the Town of Lynnfield took the Pond by way of a tax taking on or about September 5, 1973. The Massachusetts Land Court issued a Final Judgment in the tax lien case on May 13, 1997.

It is our understanding based on a review of the deeds and plans that Mr. Last's property located at 36 Elmwood Road (Lots 139, 140, 141, 142, 143, and 144) and 0 Elmwood Road (Lots 145, 146, 147) extends to the shoreline of Pillings Pond. The language of the Last Deed and the deeds over the years have described the property as "by Pillings Pond." Further, the fact that the Last Deed and prior deeds also state that the conveyance did not include rights in the water itself or mill demonstrates that the Parcels did always in fact abut the Pond.

Additionally, we have reviewed Michael Novak, P.E., of Patriot Engineering, LLC's August 12, 2021 report and arials from 1953, 1967, 1980, 1990, 1996, 2005, and 2011 depicting Mr. Last's property. The exhibits attached to Mr. Novak's letter provide an overlay of an existing conditions survey dated May 2020 of the property. The aerial exhibits demonstrate a relatively consistent upland area along the Pond at the termination of Elmwood Road from 1953 to 1996. The 1996 aerial exhibit depicts a reduction in the upland area, which was likely due to dredging

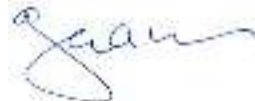
activities that occurred during that timeframe. Mr. Novak calculated the upland lost from the 1953 to 1996 aerials to be approximately 12,000 square feet when compared to the survey from May 2020. The aerials from April 2005 through 2011 show the water level of the Pond staying relatively consistent from 1996 closer to what is represented in the May 2020 plan. Mr. Novak also concluded that all of the improvements made to Mr. Last's property have been completed in an area that was always an upland area.

Based on Mr. Novak's aerial exhibits and analysis in his report and in light of the language in the deeds describing the property as "by Pillings Pond," it is our opinion that Mr. Last owns the upland located along the termination of Elmwood Road adjacent to the Pond, as that land has existed for decades, and in fact used to be a much larger parcel than currently exists. Likewise, any activities/improvements that have occurred in that upland area have clearly occurred on Mr. Last's property.

Further, Parcels 1 and 2 were both conveyed by way of the 2016 Quitclaim Deed with the benefit and rights of way over the street – Elmwood Road. Since Elmwood Road is a private road in the area between Parcels 1 and 2, pursuant to the Derelict Fee Statute, M.G.L. c.183, §58, an owner on either side of the road owns the fee to the centerline. Since Mr. Last owns the properties on both sides of Elmwood Road abutting the Pond, he therefore owns the entirety of the Road in the center of his properties along with the property located at the end of the road abutting the Pond.

Please contact us if you should have any questions.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Glenn", written in a cursive style.

Glenn A. Wood

Encl.

cc: Bryan Last

EXHIBIT A

DE 3

AD-8



SO. ESSEX #560 Bk:34884 Pg:214
04/29/2016 01:01 DEED Pg 1/3

MASSACHUSETTS EXCISE TAX
Southern Essex District ROD
Date: 04/29/2016 01:01 PM
ID: 1121270 Doc# 20160429005600
Fee: \$3,306.00
Cons: \$725,000.00

Quitclaim Deed

We, Steven F. Hill and Rita T. Hill, married, of Lynnfield, Essex County, Massachusetts, for consideration paid and in full consideration of Seven Hundred Twenty-Five Thousand and 00/100 dollars (U.S. \$725,000.00) **GRANT TO** Bryan Last, individually, of 36 Elmwood Road, Lynnfield, Massachusetts 01940,

With **QUITCLAIM COVENANTS**

The land in Lynnfield in the County of Essex, bounded and described as follows:

PARCEL 1

Being shown as Lots 139, 140, 141, 142, 143 and 144 on a Plan entitled, "Section 'A' LAKEWOOD In Lynnfield, Mass.11 dated April 1928, Shay & Shay, C. E.'s, recorded with Essex South District Deeds, Plan Book 54, Plan 7.

- NORTHEASTERLY by Pillings Pond, 109 feet, more or less;
- NORTHWESTERLY by Lots 104, 105, 106, 107 and 108 as shown on said plan, 136.01 feet;
- SOUTHWESTERLY by Lot 138, as shown on said plan, 100 feet; and
- SOUTHEASTERLY by Elmwood Road, 170.90 feet.

Containing 15,346 feet, according to said plan, be any or all of said measurements or contents more or less.

Said premises are conveyed with the benefit or rights of way over the street and passageways substantially as shown on said plan. This conveyance shall include no rights or privileges whatever in or to water rights, flowage rights, mill rights or any other rights or privileges in or to the water or the land under the water in Pillings Pond.

Property Address: 36 Elmwood Road, Lynnfield, MA 01940

PARCEL 2

Being shown as Lots 145, 146 and 147 on a Plan entitled, "Section 'A' LAKEWOOD in Lynnfield, Mass." dated April 1928, Shay & Shay, C. E.'s, recorded with Essex South District Deeds, Plan Book 54, Plan 7.

NORTHEASTERLY by Pillings Pond as shown on said plan;
NORTHWESTERLY by Elmwood Road, 53.12 feet;
SOUTHWESTERLY by Lot 148 as shown on said plan, 100 feet; and
SOUTHEASTERLY by land of owners unknown, 94.29 feet.


Containing 7,678 square feet, according to said plan, be any or all of said measurements or contents more or less.

Said premises are conveyed with the benefit or rights of way over the street and passageways substantially as shown on said plan. This conveyance shall include no rights or privileges whatever in or to water rights, flowage rights, mill rights or any other rights or privileges in or to the water or the land under the water in Pillings Pond.

For Grantor's Title, see deed dated May 22, 2006 and recorded with the Essex County Southern District Registry of Deeds at Book 25692, Page 279.

The Grantors hereby release all rights of homestead in the premises described in this deed, and state under penalties of perjury that no persons are entitled to the benefit of the homestead rights in the property being transferred per the Massachusetts Homestead Act, MGL, Ch. 188.

Witness my hand and seal this _____ day of April, 2016.



Steven F. Hill




Rita T. Hill

Essex, ss.

Commonwealth of Massachusetts

On this 29th day of April, 2016, before me, the undersigned notary public, personally appeared Steven F. Hill and Rita T. Hill, proved to me through satisfactory evidence of identification, which was/were Mass. Driver's license or and Passport to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.



Notary Public: _____
My Commission Expires: _____

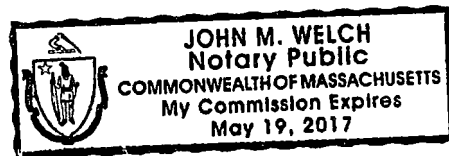


EXHIBIT B

PILLINGS

POND



SUMMER

SECTION "A"

LAKEWOOD
 IN LYNNFIELD, MASS.
 belonging to
SAMUEL B. DONOVAN
 Shay & Shay Civil Engineers
 25 Exchange St. Lynn, Mass
 lin. = 60 ft. April 1928

PLAN BOOK 54 PLAN 7
 ESSEX REGISTRY OF DEEDS, SO. DIST.
 SALEM, MASS.
 Received April 24, 1928.
 ATTEST:
 Moody Kimball REGISTER.

