

**BOARD OF SELECTMEN
AGENDA
Wednesday, October 26, 2016**

Regular Meeting –6:00 p.m.

Selectmen’s hearing room, Town Hall

****NOTE****

This meeting is being recorded and transmitted via cable television.

6:00 p.m.

Pledge of Allegiance

Revised historic restriction for Centre Farm property, Main Street

Discussion/appointment of Director of Public Works

Appointment of Lynnfield Water District and Lynnfield Center Water District commissioners and employees as special Town employees

Use of Town facilities:	None
Minutes:	None
Proclamations:	None
Administrative matters:	Signing of warrants

HISTORIC PRESERVATION RESTRICTION

THIS HISTORIC PRESERVATION RESTRICTION, made this ____ day of _____, 2016, by and between _____, of _____ (hereinafter “Grantor”) and the Town of Lynnfield, a Massachusetts municipal corporation with a mailing address of 55 Summer Street, Lynnfield, Massachusetts 01940, acting by and through its Board of Selectmen and its Historical Commission jointly (hereinafter “Grantee”),

WITNESSETH THAT:

WHEREAS, Grantee ~~is~~ ~~was~~ the owner under that certain Quitclaim Deed dated October 2, 2014 and recorded with the Essex South District Registry of Deeds at Book 33587, Page 278 of certain real property located at 567 Main Street in the Town of Lynnfield and County of Essex, Commonwealth of Massachusetts, more particularly described in the said Quitclaim Deed and in Exhibit A attached hereto and incorporated herein (hereinafter “the Property”); ~~and said~~ The Property contains 7 acres of land, more or less, being parcels A and D on a plan entitled “Plan of Land in Lynnfield Center, Mass. Belonging to Susan B. Taylor,” dated October 1, 1926, and made by S.C. Mitchell, C.E., recorded with said Deeds, Book of Plans 49, Plan 5, a copy of which is attached hereto and incorporated herein as Exhibit B. The Property includes the following structure:

a wood-frame, five-bay, highly symmetrical, two-story farmhouse-type structure and attached barn, characterized by a Federal architectural style on the main body of the house and low-pitched hipped roof, which sits on a granite-block foundation with brick side elevations. The side elevations are integrated with four massive chimney stacks. A complex and extensive wing and connected farm structure housing carriage bays and work spaces, linking the main house to a large gable front barn, extends from the left rear corner of the main body of the house, creating an L-shaped court or dooryard, as shown in the Baseline Documentation, as defined below, and known as the Rev. Joseph Mottey House (a/k/a “Centre Farm”) (hereinafter “the Building”);

WHEREAS, the Building and Property stand as a highly significant example of early architecture in Lynnfield, Massachusetts, illustrates aesthetics of craftsmanship and setting, and possesses integrity of materials and workmanship;

WHEREAS, Grantee is authorized to accept historic preservation restrictions to protect property significant in national and state history and culture under the provisions of M.G.L. chapter 184, sections 31, 32, and 33 (hereinafter “the Act”);

WHEREAS, Grantor has acquired the Property with the Building thereon from Grantee pursuant to a deed, recorded herewith, requiring Grantor to grant an historic preservation restriction to Grantee;

WHEREAS, the Property is located in the historic center of the Town of Lynnfield;

WHEREAS, because of their architectural, historic, and cultural significance the Building and Property were listed in the State and National Registers of Historic Places on November 21, 1976 as a contributing resource to the Meetinghouse Common District;

WHEREAS, Grantee and Grantor are concerned about the incremental erosion of the architectural and cultural resources of the Town of Lynnfield through inappropriate renovation of significant historic structures;

WHEREAS, preservation ~~of the front façade of the exterior of the Building of the exterior of the Building and the Property~~ in its current state will contribute to the preservation and maintenance of the scale and character of this important and historic part of the Town of Lynnfield for the enjoyment of the general public;

WHEREAS, Grantor and Grantee recognize the architectural, historic and cultural values (hereinafter “preservation values”) and significance of the Building and Property, and have the common purpose of conserving and preserving the aforesaid preservation values and significance ~~of the front façade of the exterior of the Building and Property~~ as contemplated herein;

WHEREAS, the preservation values ~~of the front façade~~ of the exterior of the Building and Property are documented in a set of reports, drawings, and photographs (hereinafter “Baseline Documentation”) attached hereto and incorporated herein by reference, which Baseline Documentation the parties agree provides an accurate representation of the Building and Property as of the effective date of this grant;

WHEREAS, the Baseline Documentation shall consist of the following:

- a. Exhibit A – Legal Description of Property,
- b. Exhibit B – Recorded Plan,
- c. Exhibit C – Set of Photographs of the Exterior of the Building taken during the month of _____, 20____, and
- d. Exhibit D – Massachusetts Historical Commission Inventory Form B prepared by preservation consultant John Clemson on _____, 20____ for the Lynnfield Historical Commission; color photographs taken in 2016, attached hereto as Exhibit B, copies of which are on file with the Town Clerk of the Town of Lynnfield, Massachusetts;

WHEREAS, the grant of a preservation restriction by Grantor to Grantee on ~~the front-façade of the exterior of~~ the Building and Property as contemplated herein will assist in preserving and maintaining ~~the front-façade of~~ the exterior of the Building and Property and their architectural, historic and cultural features for the benefit of the people of the Town of Lynnfield, the Commonwealth of Massachusetts, and the United States of America; and

WHEREAS, to that end, Grantor desires to grant to Grantee, and Grantee desires to accept, this preservation restriction in gross in perpetuity on the exterior of the Building and Property pursuant to the Act;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to M.G.L. chapter 184, sections 31,

32, and 33, Grantor does hereby voluntarily grant and convey unto the Grantee this preservation restriction (hereinafter “the Restriction”) in gross in perpetuity on ~~the front façade of the exterior of the Building and Property.~~

PURPOSE

1. Purpose. It is the Purpose of this Restriction to assure ~~to the greatest extent possible~~ that the ~~exterior~~ architectural, historic, and cultural features ~~of the front façade of the exterior envelope~~ of the Building will be retained and maintained forever substantially in ~~its~~ ~~their~~ current condition for preservation purposes, and to prevent any change to the ~~front façade of the exterior of the Building~~ that will significantly impair or interfere with the preservation values of the ~~front façade of the exterior of the Building.~~ ~~So as to not misconstrue and to clearly delineate the meaning of the term “front façade of the exterior of the Building” or “front façade of the Building” as used herein, see plan approved by the Lynnfield Historical Commission entitled “Property at 567 Main Street Lynnfield, MA” attached hereto as Exhibit C and incorporated herein by reference (hereinafter referred to as the “Plan”).~~

GRANTOR’S COVENANTS

2.1 Grantor’s Covenants: Covenant to Maintain. Grantor agrees at all times to maintain the ~~front façade of the exterior of the Building~~ in sound structural condition and a good state of repair in accordance with the terms of this paragraph. It is Grantor’s intent that the ~~front façade of the exterior of the Building~~ shall be maintained in a physical appearance and composition that is as close to its current appearance and composition as is reasonably possible and as documented in the Baseline Documentation. Grantor’s obligation to maintain shall require replacement, ~~rebuilding,~~ repair, and reconstruction ~~of the Building by Grantor~~ whenever necessary to preserve the ~~front façade of the exterior of the Building~~ in sound structural condition and a good state of repair ~~in accordance with The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the “Secretary’s Standards”).~~ The Building and Property as a whole shall also be well maintained and neatly kept with any landscaping regularly cut and trimmed. Grantor’s Covenant to Maintain is subject to other terms of this Restriction including, but not limited to, the casualty provisions of paragraphs 5 and 6. The Grantor agrees to file with the Historical Commission a copy of any application for a building permit, foundation permit, demolition permit or other permit that the Grantor files with the Building Inspector of the Town of Lynnfield for work on or involving the Building or the Property at or before the time such application is first submitted to the said Building Inspector.

2.2 Grantor’s Covenants: Prohibited Activities. The following acts or uses are expressly forbidden on, over, or under the Building and Property, except as otherwise conditioned in this paragraph:

- (a) the Building or any part thereof shall not be demolished, removed, or razed (by affirmative action or through neglect or failure to repair and maintain) except as provided or allowed in paragraphs 2.3, 3.1, 5 and 6;

- (b) No additional aboveground utility transmission lines may be created by the Grantor on the Property;
- (c) No changes to the ~~front façade of the~~ exterior of the Building may be made except as provided or allowed in paragraph 2.3 and 3.1;
- (d) No change of exterior colors may be made except as allowed by the Historical Commission; and
- (e) The Property shall not be divided or subdivided or made subject to M.G.L. Chapter 183A (the Condominium Statute).

2.3 Grantor's Covenants: Allowed Activities. The following acts or uses are expressly allowed on, over, under, or to the Building and Property, except as otherwise conditioned in this paragraph:

- (a) ~~Subject to prior review and approval by the Historical Commission, which approval shall not be unreasonably withheld, following submission of a written request including plans and specifications as required under paragraph 3, the~~ window and door locations in the ~~Connector~~ portion of the Building between the Federal House and the Barn ~~as shown on the Plan~~ may be changed or altered, notwithstanding the effect on the ~~front façade of the~~ exterior of the Building. ~~The new window and door locations and materials used shall be approved by the Historical Commission;~~
- (b) ~~Ordinary maintenance and repair of the exterior of the Building and the Property which is of a minor nature. Maintenance of the front façade of the exterior of the Building, which does not change it.~~ This specifically includes and allows for spot repair of cladding, hand scraping or sanding, and repainting as well as window repair involving caulking, painting and re-glazing. ~~For the purpose of this preservation restriction agreement, interpretation of what constitutes ordinary maintenance and repair or alterations of a minor nature is governed by the Restriction Guidelines, which are attached hereto as Exhibit E, and incorporated herein by this reference.~~ Re-roofing with in kind shingles similar to the current condition is also allowed;
- (c) The interior of the Building may be renovated, changed or altered, ~~without prior approval by the Historical Commission, so long as such changes have no visual, material or structural impact on the exterior of the Building. Any interior structural changes that may potentially alter the exterior appearance of the Building or the structural integrity of the exterior of the Building shall require prior review and approval by the Historical Commission; no restrictions whatsoever, so long as it has no visual impact on the front façade of the exterior of the Building;~~

- (d) ~~Subject to prior review and approval by the Historical Commission, which approval shall not be unreasonably withheld, following submission of a written request including plans and specifications as required under paragraph 3, Additions may be constructed onto the Building and additional structures built on the Property so long as they are not located, in whole or in part, between the front façade of the Building and Main Street or a side lot line of the Property, provided that “structures” shall include, without limitation, fences, sheds, garages, swimming pools and cabanas. See Exhibit C for purposes of an example. Furthermore, no additions to the Building or additional structures on the Property shall be higher, at their highest point, than the ridge line of the roof of the connector portion of the Building between the Federal House and the Barn, and any additions must meet the Secretary’s Standards structure shown as the “Connector” on Exhibit C;~~
- (e) Exterior materials used to make additions shall be in like kind to the original to the extent that modern available building materials and building codes allow; and
- (f) Accessory uses or structures including, but not limited to, fences, sheds, garages, swimming pools, and cabanas may occur or be constructed on the Property so long as they comply with paragraph 2.3(d), above, and they either (i) are allowed as of right under the Lynnfield Zoning Bylaw or (ii) receive any necessary relief from the Lynnfield Board of Appeals or any other board with jurisdiction regarding the same.

GRANTOR’S CONDITIONAL RIGHTS

3.1 Conditional Rights Requiring Approval by Grantee. ~~Without the prior express written approval of the Grantee, which approval may not be unreasonably withheld but which may be subject to such reasonable conditions as Grantee in its discretion may determine, Grantor shall not make any changes to the exterior (including fenestration and roof) of the Building and Property, including the alteration, partial removal, construction, remodeling, or other physical or structural change to the exterior and any change in material or color and the footprint, size, mass, ridgeline and rooflines of the Building and Property. Activities by Grantor to maintain the exterior of the Building and Property which are not intended to change the exterior appearance of the Building and Property and which are intended to be performed in accordance with provisions of paragraph 2.1 shall not require the prior approval of Grantee. The Grantor may also make any alterations or changes to the Building and Property, that are either prohibited pursuant to paragraph 2.2 and/or not expressly allowed pursuant to paragraph 2.3, upon obtaining written permission (by majority vote) to do so from the Historical Commission, which shall not be deemed effective until recorded at Essex South Registry of Deeds.~~

3.2 Review of Grantor’s Requests for Approval. Grantor shall submit a written request to the Historical Commission for its approval of those conditional rights set out at paragraph 3.1 that shall include two copies of information (including plans, specifications and designs) identifying the proposed activity with reasonable specificity. In connection therewith,

Grantor shall also submit to the Historical Commission a timetable for the proposed activity sufficient to permit it to monitor such activity. Within forty-five (45) days of receipt of Grantee's receipt of the written request and required information for approval hereunder, the Historical Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Historical Commission shall provide Grantor with written suggestions for modification or a written explanation for the Historical Commission's disapproval. Any failure by the Historical Commission to act within sixty (60) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Historical Commission of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted, so long as the submission or request sets forth the provisions of this paragraph 3.3 relating to deemed approval after the passage of time. The provisions of this paragraph 3.3 shall not apply to any activity that is prohibited by the terms of this Restriction, it, in its sole discretion, approves, conditionally approves or denies the request in a form that allows it to be recorded at Essex South Registry of Deeds. Any failure by Historical Commission to act pursuant to the terms hereof shall be deemed to constitute a denial of the request.

3.3 Standards for Review. In exercising any authority created by this Restriction to inspect the Building; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, Grantee shall apply the Secretary's Standards.

4. Public Access. This Restriction does not involve or require public access.

CASUALTY DAMAGE OR DESTRUCTION; INSURANCE

5. Casualty Damage or Destruction. In the event that the exterior of the Building or any part thereof shall suffer major damage or destruction by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall notify Grantee in writing within fourteen (14) days of the damage or destruction or such reasonable time thereafter, depending upon the circumstances of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Building and to protect public safety, shall be undertaken by Grantor without Grantee's prior written approval. Within ninety (90) days of the date of damage or destruction, if required by Grantee, Grantor at its expense shall submit to the Grantee a written report prepared by a qualified restoration architect and an engineer, which report shall include the following:

- (a) an assessment of the nature and extent of the damage;
- (b) a determination of the feasibility of the restoration of ~~the front façade of the~~ exterior of the Building in conjunction with the other parts of the Building. Only ~~the front façade of the~~ exterior of the Building, not the entire Building, would be required to be restored/reconstructed to the condition existing as of the date hereof; and

- (c) a report of such restoration/reconstruction work necessary to return ~~the front façade of~~ the exterior of the Building to the condition existing as of the date hereof in conjunction with other parts of the Building. Only the ~~front façade of the~~ exterior of the Building, not the entire Building, would be required to be restored/reconstructed to the condition existing as of the date hereof.

6. Review After Casualty Damage or Destruction. If, after reviewing the report provided in paragraph 5 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 7, Grantor and Grantee agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and Grantee shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the ~~front façade of the~~ exterior of the Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 7, Grantor and Grantee agree that restoration/reconstruction of the ~~front façade of the~~ exterior of the Building in conjunction with the other parts of the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction, Grantor may, with the prior written consent of the Grantee, alter, demolish, remove, or raze the Building and/or construct new improvements on the Property. Grantor and Grantee may ~~then~~ agree to seek to extinguish this Restriction in whole or in part in accordance with the laws of the Commonwealth of Massachusetts and paragraph 18 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 7, Grantor and Grantee are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts's arbitration statute then in effect.

7. Insurance. Grantor shall keep the Building and Property insured by an insurance company licensed to do business in the Commonwealth of Massachusetts for the full replacement value against loss from perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. The insurance shall include an amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor not including a deductible. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

INDEMNIFICATION; TAXES

8. Indemnification. Except for any instance of gross negligence or willful misconduct on the part of Grantee or Grantee's agent, director, officer, employee, or independent contractor, the following shall apply: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend at its own cost and expense, Grantee, its agents, directors, officers, and employees, or independent contractors from and against any and all claims, liabilities, expense, costs, damages, losses, and expenditures (including reasonable attorney's fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Property; the presence or release in, on or about the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any law, ordinance, or regulation as a hazardous, toxic, polluting, or contaminating substance; or other injury, death or other damage occurring on or about the Property; unless such injury, death or damage is caused by Grantee or any agent, director, officer, employee, or independent contractor of Grantee. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property.

ADMINISTRATION AND ENFORCEMENT

9. Written Notice. Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing and shall be delivered by one of the following methods – by overnight courier postage prepaid, facsimile transmission, registered or certified mail with return receipt requested, or hand delivery; if to Grantor, at _____, and if to Grantee, then to both the Board of Selectmen and the Historical Commission (by separate notices) at 55 Summer Street, Lynnfield, Massachusetts 01940. Each party may change its address set forth herein by a notice to such effect to the other party.

10. Evidence of Compliance. Upon request by the Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein or that otherwise evidences the status of this Restriction to the extent of Grantee's knowledge thereof.

11. Inspection. With the consent of Grantor, representatives of Grantee shall be permitted at reasonable times to inspect the Building and Property each May on an annual basis at the convenience of both Grantor and Grantee. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections. Such inspection shall include the all exterior areas of the Building and Property.

12. Grantee's Remedies. Grantee shall provide Grantor written notice of any violations of this Restriction and if the Grantor does not remedy the violation within sixty (60) days of said notice the Grantee may institute suit(s) to enjoin any violation of the terms of this Restriction by ex parte, temporary, preliminary, and/or permanent injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the Building and Property to the condition and appearance that existed prior to the violation complained of, it being acknowledged by Grantor that Grantor has no adequate remedy at law and that violation of any covenant hereof by Grantee threatens Grantor with irreparable harm. Grantee shall also have available all legal and other equitable remedies to enforce Grantor's obligations hereunder. In

the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any reasonable costs and documented expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including court costs, and attorney's, architectural, engineering, and expert witness fees. In the event that Grantor is required to reimburse Grantee pursuant to the terms of this paragraph, the amount of such reimbursement until discharged, shall constitute a lien on the Property. Exercise by Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time. Notwithstanding anything to the contrary stated in this paragraph, if the Grantee reasonably deems the violation to be an emergency situation no notice is required prior to filing suit as contemplated herein.

13. Notice from Government Authorities. Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

14. Plaque. Grantor agrees that Grantee at Grantee's expense may provide and maintain a plaque or marker on the Building and Property, which plaque or marker shall not exceed 12 inches by 24 inches in size, giving notice of the significance of the Building and Property and the existence of this Restriction. The plaque or marker shall be approved by Grantor prior to installation, such approval not to be unreasonably withheld and shall be placed in a location visible to the public to be determined by the Grantor.

BINDING EFFECT; ASSIGNMENT

15. Runs with the Land. Except as provided in paragraphs 6 and 18.1, the obligations imposed by this Restriction shall be effective in perpetuity and shall be deemed to run as a binding servitude with the Property. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words "Grantor" and "Grantee" when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word "Grantee" shall include all such successors and assigns.

Grantor agrees to incorporate by reference the terms of this Restriction in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including without limitation a leasehold interest for a term greater than one year.

Anything contained herein to the contrary notwithstanding, an owner of the Property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Restriction shall be inserted by Grantor, by express reference, in any subsequent deed or other legal instrument by which Grantor divests himself, herself or itself of either the fee simple title to or any lesser estate in the Property or any part

hereof, including by way of example and not limitation, a lease of all or a portion of the Property, but excluding any lease with a term of fewer than ninety (90) days.

16. Assignment. Upon the written consent of the Grantor, the Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national organization that is a “qualified organization” that qualifies under the Act as an eligible donee whose purposes, *inter alia*, are to promote preservation or conservation of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out as a condition of the transfer. If the Historical Commission is abolished or otherwise ceases to exist, the Board of Selectmen of the Town of Lynnfield shall solely constitute the Grantee and may, in its sole discretion, designate a successor entity to replace the Historical Commission hereunder.

17. Recording and Effective Date. Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this instrument in the land records of the County of Essex. Grantor and Grantee intend that the restrictions arising under this Restriction take effect on the day and year this instrument is so recorded.

EXTINGUISHMENT

18.1 Extinguishment. Grantor and Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the Building and Property in a manner consistent with the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such circumstances may include, but are not limited to, partial or total destruction of the Building or Property resulting from casualty. Extinguishment shall meet the requirements of the Act for extinguishment including approval by the Massachusetts Historical Commission following a public hearing to determine that such extinguishment would be in the public interest. In the event of any sale of all or a portion of the Property (or of any other property received in connection with an exchange or involuntary conversion of the Property), the proceeds of such sale shall be paid to Grantor.

18.2 Condemnation. If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct damages resulting from the taking. Such recovered proceeds shall be paid to Grantor.

INTERPRETATION

19. Interpretation. The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction.

- (a) Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of Building and Property shall not apply in the construction or

interpretation of this Restriction, and this instrument shall be interpreted broadly to effect its Purpose and the transfer of rights and the restrictions on use herein contained.

- (b) This instrument may be executed in two counterparts, one of which may be retained by the Grantor, and the other, after recording, to be retained by the Grantee. In the event of any discrepancy between the counterparts produced, the recorded counterpart shall in all cases govern. In the event of any discrepancy between two copies of any documentation retained by the parties, the copy retained by Grantee shall control.
- (c) This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.
- (d) Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any bylaw or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such bylaw or regulation and the terms hereof, Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such bylaw or regulation.

19.1 Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.

AMENDMENT

20. Amendment. If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of the Restriction or the status of Grantee under the laws of the Commonwealth of Massachusetts. Any such amendment shall be consistent with the protection of the preservation values of the Building and Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural, historic, natural habitat, and open space values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the land records of the County of Essex. Nothing in this paragraph shall require

Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

21. Archaeological Activities. The conduct of archaeological activities, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (Massachusetts General Laws, chapter 9, section 27C, 950 C.M.R. 70.00).

THIS RESTRICTION reflects the entire agreement of Grantor and Grantee. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this instrument.

TO HAVE AND TO HOLD, the said Historic Preservation Restriction, unto the said Grantee and its successors and permitted assigns forever. This HISTORIC PRESERVATION RESTRICTION may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands this ___ day of _____, 2016.

GRANTOR:

GRANTEE:

Town of Lynnfield, Massachusetts
By its Board of Selectmen

Philip Crawford

Richard Dalton

Christopher Barrett

And its Historical Commission

Steven Todisco

Faith Honer-Coakley

Shelley Lynch

Steven Richard

Roy Sorli

COMMONWEALTH OF MASSACHUSETTS

Essex, ss. _____, 2016

On this ____ day of _____, 20165, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss. _____, 2016

On this ____ day of _____, 20165, before me, the undersigned notary public, personally appeared _____, Philip Crawford, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names ~~are~~ is signed on the preceding or attached document, and acknowledged to me that ~~they~~ he signed it voluntarily for its stated purpose as a member of the Board of Selectmen of the Town of Lynnfield, Massachusetts, ~~or a majority thereof~~

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss. _____, 2016

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared Richard Dalton, proved to me through satisfactory evidence of identification, which was personal knowledge, 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 purpose as a member of the Board of Selectmen of the Town of Lynnfield, Massachusetts.

Notary Public
My commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

Essex, ss. _____, 2016

On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared Christopher Barrett, proved to me through satisfactory evidence of identification, which was personal knowledge, 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 purpose as a member of the Board of Selectmen of the Town of Lynnfield, Massachusetts.

Notary Public
My commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

Essex, ss. _____, 2016

On this ____ day of _____, 2016~~5~~, before me, the undersigned notary public, personally appeared _____, Steven Todisco, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name ~~are~~ is signed on the preceding or attached document, and acknowledged to me that ~~they~~ he signed it voluntarily for its stated purpose as a member of the Historical Commission of the Town of Lynnfield, Massachusetts ~~or a majority thereof~~

Notary Public
My commission expires:

**APPROVAL BY MASSACHUSETTS HISTORICAL COMMISSION
COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

Date: _____

Brona Simon
Executive Director and Clerk
Massachusetts Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. _____, 2016

~~On this _____ day of _____, 2016, before me, the undersigned notary public, personally appeared Brona Simon, proved to me through satisfactory evidence of identification, which was _____, 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 purpose as the Executive Director and Clerk of the Massachusetts Historical Commission. Then personally appeared the above named _____ and acknowledged the foregoing instrument to be her free act and duly authorized deed of the Massachusetts Historical Commission, before me;~~

Notary Public
My Commission Expires:

Exhibit A
Legal Description

The land, with the buildings and improvements thereon, known and numbered as 567 Main Street, Lynnfield, Massachusetts, and bounded and described as follows:

Beginning at the Northwestern corner of the granted premises on the street leading from said Lynnfield Center to Wakefield, now known as Main Street, at the corner of the new Cemetary, so-called, thence running North 70° 48' East 115.50 feet to an angle; thence North 74° East 61 feet to an angle; thence North 79° 18' East 102.50 feet to an angle; thence North 84° 42' East 111 feet to an angle; thence South 89° 18' East 57 feet to an angle; thence South 81° 03' East 49 feet to the old Cemetary, so-called; thence South 4° 34' East 92.2 feet to an angle; thence South 31° East 98.54 feet; thence by the old Cemetary wall north 70° 06' East 70.10 feet; thence North 60° 15' East 55 feet to the center of a brook; thence by the middle of said brook South 18° 15' West 178.5 feet to an angle; thence South 15° 30' West 133.5 feet to an angle; thence South 12° 45' West 121 feet to an angle; thence South 13° 15' West 27 feet to an angle; thence South 27° 30' West 36 feet to an angle; thence South 55° West 195 feet to a point in the brook where there is a willow tree at each side of the brook at land of Taylor; thence North 26° West 588.80 to an angle; thence North 26° 40' West 512 feet to the point of beginning.

Containing 7 acres of land, more or less, and being parcels A and D on a plan entitled "Plan of Land in Lynnfield Center, Mass. Belonging to Susan B. Taylor," dated October 1, 1926, and made by S.C. Mitchell, C.E., recorded with said Deeds, Book of Plans 49, Plan 5.



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Massachusetts Historical Commission

October 4, 2016

Thomas A. Mullen, Esq.
40 Salem St
Building 2, Suite 12
Lynnfield, MA 01940

RE: Draft Preservation Restriction Agreement, 567 Main Street (aka Centre Farm), Lynnfield, Massachusetts (MHC # LNF.12)

Dear Attorney Mullen:

Staff of the Massachusetts Historical Commission (MHC) have reviewed the revised draft preservation restriction received by our office on September 12, 2016 with your letter dated September 7, 2016, and in response to MHC's comment letter to Shelly Lynch of the Lynnfield Historical Commission on April 20, 2016. The following comments are provided under the MHC's statutory approval authority for preservation restrictions under M.G.L. Chapter 184, Section 32.

The extensive modifications in this draft to current standard Massachusetts preservation restriction terms are not acceptable to the MHIC as written. Please note that while Grantor may reserve rights to create new structures on the Property and additions to specified portions of the Building, the preservation restrictions nevertheless must apply to the entire exterior envelope of the Building and its setting on the Property. The preservation restriction agreement must also reference The Secretary of the Interior's Standards for the Treatment of Historic Properties as the standards that Grantor and Grantee will follow. Specific comments on the terms of the draft agreement are as follows:


- 1) Page 1. First recital. Please add an exhibit reference to the recorded plan of the Property cited at the end of Exhibit A (1926, Plan Book 49, Plan 5) and include a copy of the recorded plan as Exhibit B.
- 2) Page 2. Second recital on page. The preservation restriction may not be limited to the front façade of the Building. Please delete "of the front façade of the exterior of the Building" and replace with "of the exterior of the Building and the Property." The term of the preservation restriction must address the entire exterior envelope of the Building and its setting on the Property.
- 3) Page 2. Third recital on page, last line. Delete "of the front façade".
- 4) Page 2. Fourth recital on page, first line. Delete "of the front façade".
- 5) Page 2. Fifth recital on page. The Baseline Documentation shall be revised to include the following:
 - a. Exhibit A – Legal Property Description
 - b. Exhibit B – Recorded Plot Plan (missing from your submission)
 - c. Exhibit C – Set of XX Photographs of the Exterior of the Building taken Month/Year (Note that the photographs included in current Exhibit B showing the "front façade" are not adequate – photos of all exterior elevations of the Building must be included.)
 - d. Exhibit D – Massachusetts Historical Commission Inventory Form B prepared by preservation consultant John Clemson on Month/Year for the Lynnfield Historical Commission (missing from your submission – a complete copy of this Form B with all photos must be included with the agreement)

- 6) Page 2. Sixth recital on page. Delete both references to “the front façade of”.
- 7) Page 2. Conveyance statement. (“NOW, THEREFORE,”). Delete “the front façade of”.
- 8) Page 1. Para. 1. Purpose. Delete all references to the front façade of the exterior of the Building. The restrictions shall apply to the entire exterior envelope of the Building. Line 1. Delete “to the greatest extent possible”. The purpose of the restriction may not be conditioned in this way.
- 9) Page 3. Para 2.1 Delete all references to the front façade. Replace sentence 3 with: “Grantor’s obligation to maintain shall require replacement, rebuilding, repair and reconstruction of the Building whenever necessary to preserve the exterior of the Building in a sound structural condition and a good state of repair in accordance with The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the “Secretary’s Standards”).”
- 10) Page 3. Para 2.2(c). As elsewhere the limitation of the terms of the agreement to the front façade is problematic here. Page 4. Para 2.3 (a). Add to beginning. “Subject to prior review and approval by the Historical Commission, which approval shall not be unreasonably withheld, following submission of a written request including plans and specifications as required under Paragraph 3, the window and door locations ...” Delete the last sentence.
- 11) Page 4. Para 2.3(b). Revise to “Ordinary maintenance and repair of the exterior of the Building and the Property which is of a minor nature. This specifically includes and allows for spot repair of cladding, hand scraping or sanding and repainting as well as window repair involving caulking, painting and re-glazing. For the purposes of this preservation restriction agreement, interpretation of what constitutes ordinary maintenance and repair or alterations of a minor nature is governed by the Restriction Guidelines, which are attached hereto as Exhibit [], and incorporated herein by this reference.” Please see the attached Restriction Guidelines required by MHC.
- 12) Page 4. Para 2.3(c). Revise to: “The interior of the Building may be renovated, changed or altered without prior approval by the Historical Commission, so long as such changes have no visual, material or structural impact on the exterior of the Building. Any interior structural changes that may potentially alter the exterior appearance of the Building or the structural integrity of the exterior of the Building shall require prior review and approval by the Historical Commission.”
- 13) Page 4, Para 2.4 (d) Add to beginning. “Subject to prior review and approval by the Historical Commission, which approval shall not be unreasonably withheld, following submission of a written request including plans and specifications as required under Paragraph 3...” “Without limitation”? This suggests that ANY sort of structure may be built. Is that the intent? “See Exhibit C for purposes of an example.” What does this mean? We could discuss whether free-standing minor structures may be allowed without prior approval. Grantor may retain the right to make additions to the historic Building, but these must be conditioned upon prior Historical Commission review and approval. Any additions must meet the Secretary’s Standards.
- 14) Page 4, Para 3.1. This paragraph is not acceptable. Both Grantor and Grantee must abide by the terms of the preservation restriction. Not activities counter to the Purpose of the agreement may be allowed. A modification of the terms of the agreement requires an amendment to the agreement (see Paragraph 20).
- 15) Page 4. Para 3.2. This paragraph refers back to “the conditional rights set out in paragraph 3.1,” but no specific conditional rights are included in 3.1. As the standard preservation restriction language for conditional rights has been removed paragraphs 3.1 and 3.2 no longer make sense. These paragraphs must be rewritten correctly.
- 16) The following paragraph must be added: 3.3 Standards for Review. In exercising any authority created by this Restriction to inspect the Building; to review any construction, alteration, repair or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Building following casualty damage, the Grantee shall apply the Secretary’s Standards.
- 17) Para 5(b & c). Delete references to the front façade.

- 18) Para 6. Delete references to the front façade. Second section, last sentence: revise to “may agree to seek to extinguish this Restriction”
- 19) Para 9. Written notice to Grantee must be to both the Board of Selectmen and the Lynnfield Historical Commission.
- 20) The following paragraph shall be added: 19.1 Notice of Proposed Sale. Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.
- 21) The following term is required by the MHC: **21 Archaeological Activities**. The conduct of archaeological activities on the Property, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. Ch. 9, Sec. 27C, 950 C.M.R. 70.00).
- 22) Page 11. Names of all signatories must appear in typescript under their signature lines. A standard Approval and Acceptance statement must be provided for the Town of Lynnfield Board of Selectmen stating the date of the vote to approve and accept. A standard Acceptance Statement must be provided for the Lynnfield Historical Commission stating the date of the vote of to accept. Individual notary signature verifications must be provided for each signatory. Group signature verifications are not accepted.
- 23) Page 13. The signatory for the Massachusetts Historical Commission must be identified as Brona Simon, Executive Director and Clerk. Please delete the Date line to the left of the signature line. The correct current Massachusetts signature verification statement for notaries must be employed.
- 24) The letter designations for Exhibits shall be revised based on comments above. Note additional required Exhibits.
- 25) Exhibit B. Photographs (see comments above). All photographs must include clear descriptive captions of view depicted and date (month/year) photograph was taken. Photographs may be grouped two to a page.
- 26) The entire agreement including all Exhibits, must be continuously paginated, bottom center. Page numbers should run 1 through N, where N is the total number of pages, including all Exhibits.

Please provide a revised draft agreement, incorporating the comments above, and including all Exhibits, for MHC review and comment. When the agreement is in final form acceptable to the MHC, we will provide a pre-signature approval letter, at which time Grantor and Grantee may execute the agreement and forward it to MHC for signature approval. MHC is normally the final signatory prior to recording. If there is a requirement to record the agreement immediately following transfer of property to Grantor prior to any other encumbrances, please let me know. Please contact me with any questions regarding the comments included in this letter.

Sincerely,


Michael Steinitz
Deputy State Historic Preservation Officer
Director, Preservation Planning Division
Massachusetts Historical Commission

Encl.

Xc: James Boudreau, Lynnfield Town Administrator; Lynnfield Historical Commission

RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify paragraph three of the terms of the preservation restriction, which deals with alterations to the Property. Under this section permission from the GRANTEE is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require GRANTEE review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the GRANTEE, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by the property owner.

PAINT

Minor - Exterior or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, ornamental woodwork, stone, masonry, decorative or significant original stucco or plaster.

WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences; ground disturbance affecting archaeological resources.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the preservation restriction such changes must be reviewed by the GRANTEE and their impact on the historic integrity of the property assessed.

It is the responsibility of the property owner to notify the GRANTEE in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the preservation restriction is to enable the GRANTEE to review proposed alterations and assess their impact on the integrity of the building, not to preclude future change. GRANTEE will attempt to work with property owner to develop mutually satisfactory solutions, which are in the best interests of the Property.

SPECIAL MUNICIPAL EMPLOYEES in the TOWN of LYNNFIELD

School Committee
Veterans Services Officer
War Memorial Committee

Proposed

Lynnfield Water District Board of Water Commissioners
Lynnfield Water District employees
Lynnfield Center Water District Board of Water Commissioners
Lynnfield Center Water District employees

Special Municipal Employees

The conflict of interest law, G.L. c. 268A, covers all municipal officials and employees, whether elected or appointed, paid or unpaid, full-time or part-time. However, two sections of the conflict law apply less restrictively to those part-time or unpaid municipal officials who have been designated as "special municipal employees."

"Special municipal employee" status can be assigned to certain municipal positions by a vote of the board of selectmen, board of aldermen, town council or city council. Several specific municipal positions are automatically designated as "special" under the law. Your position is eligible to be designated as a "special municipal employee" position provided that:

- you are not paid; or
- you hold a part-time position which allows you to work at another job during normal working hours; or
- you were not paid by the city or town for more than 800 working hours (approximately 20 weeks full-time) during the preceding 365 days.

It is the municipal position that is designated as having "special" status, not the individual. Therefore, all employees holding the same office or position must have the same classification as "special municipal employees." For instance, one member of a school committee cannot be classified as a "special" unless all members are similarly classified.

The designation may be made by a formal vote of the board of selectmen, board of aldermen, town council or city council at any time. Votes should be taken individually for each board or position being designated, expressly naming the positions being designated. Once a position is designated as having "special" status, it remains a "special municipal employee" position unless and until the classification is rescinded. A list of all the "special municipal employee" positions should be on file at the town or city clerk's office. This list should also be filed with the Ethics Commission.

Under no circumstances may a mayor, city councilor, town councilor, alderman, or selectman in a town with a population of more than 10,000 be designated as a "special." However, in towns of 10,000 or less, selectmen are automatically considered "special" employees. Other municipal positions in towns with a population of less than 10,000 must still be designated as "special municipal employee" positions by the selectmen.

The Legislature may also designate certain positions to have "special municipal employee" status. For example, board members and part-time employees of local housing and redevelopment authorities are defined by law as "special municipal employees" and do not need to have local authorities approve their designation as "specials." (See G.L. c. 121B, section 7.)

THE CONFLICT LAW IS LESS RESTRICTIVE FOR "SPECIALS"

Only two sections of the conflict of interest law apply less restrictively to "specials", §§ 17 and 20. All other sections of the conflict law that govern regular municipal employees apply to "special municipal employees" in exactly the same way. See the Summary of the Conflict Law for Municipal Managers or the Practical Guide to the Conflict Law for Municipal Employees for information on your responsibilities under the law (these publications are available from the State Ethics Commission). Remember that even if you serve on an unpaid part-time board or commission, you are still considered a regular municipal employee, unless your position has been expressly designated as having "special municipal employee" status.

Section 17 - Acting on Behalf of Others

Section 17 generally prohibits municipal employees from representing a private party before municipal boards or departments. It also prohibits municipal employees from acting as agent (or attorney) for a private party in connection with any matter of direct and substantial interest to their city or town. Finally, it prohibits municipal employees from accepting pay or other compensation in connection with any matter of direct and substantial interest to their municipality.

However, if you are a "special municipal employee," you may:

- represent private parties before municipal boards other than your own, provided that you have not officially participated in the matter and the matter is not now (and was not within the past year) within your official responsibility;
- act as agent for private parties in connection with a matter of interest to your city or town, provided that you have not participated in the matters as a municipal official, and that the matter is not (and has not been, during the past year) within your official responsibility; and
- receive pay or other compensation in connection with matters involving your city or town, provided that you have not officially participated in the matters and they are not (and have not been, within the past year) within your official responsibility.

Example: You are a Conservation Commissioner. The Commission has been given "special municipal employee" status. You are also an engineer in private practice in town.

- You may be hired as site engineer and represent a private development company at a Planning Board hearing, as long as the hearing does not in any way involve Conservation Commission matter.
- However, if the hearing is about a wetlands dispute, you could not represent the developer before the Planning Board because the matter is under your official responsibility as Conservation Commissioner.

- Also, if you prepare site plans, blueprints, structural analyses or other professional documents, you may not allow the developer to submit those materials to the Conservation Commission (or to any other municipal boards, in connection with matters under the Conservation Commission's responsibility).
- Also, you may not be paid for giving the developer advice about how to get his project approved by the Conservation Commission, or for any other activity related to the Conservation Commission review process.

Note that the prohibition against "acting as agent" covers any type of activity that involves representing someone other than your city or town. Activities which can be considered "acting as agent" include: serving as someone's spokesperson; making phone calls or writing letters; acting as a liaison; affixing professional seals or signing supporting documentation; and participating as an electrician, plumber or other contractor during municipal building inspections. For more information about section 17, request Advisory No. 13: Municipal Employees Acting as Agent from the State Ethics Commission.

Section 20 -- Restrictions on Having an Interest in Contracts with your City or Town

Section 20 generally prohibits municipal employees from having a direct or indirect financial interest in a contract with their city or town. However, there are many exemptions in this section of the law. For instance, a municipal employee may own less than 1% of the stock of a company that does business with the municipality.

Also, a municipal employee may have a financial interest in a contract with a municipal department which is completely independent of the one where he works, provided that the contract has been publicly advertised or competitively bid, and the employee has filed a disclosure of his interest in the contract with the city or town clerk. Note that there are additional requirements for personal services contracts: contact your town counsel or city solicitor or the State Ethics Commission's Legal Division for more information.

However, if you are a "special municipal employee," you have two additional exemptions to section 20:

As a "special municipal employee," you may have a financial interest in a contract with a department which is completely independent of the one where you work, provided that you file a disclosure of your interest in the contract with the city or town clerk (there is no "public notice" or "competitive bid" requirement for this "special municipal employee" exemption).

As a "special municipal employee", you may even have a financial interest in a contract with your own department (or with a department which has overlapping jurisdiction with your department), provided that you file a disclosure of your interest in the contract with

the city or town clerk and the board of selectmen, board of aldermen, town council or city council vote to grant you an exemption to section 20.

Example: You are a member of the School Committee, which has been given "special municipal employee" status. You also own a hardware store in town.

- You may sell light bulbs to the town's Department of Public Works, because Public Works is not under the jurisdiction of the School Committee; however, you must file a disclosure of your interest in the lightbulb sales with the Town Clerk.
- You also may sell light bulbs to the School Department (which is under the School Committee's jurisdiction), but only if you file a disclosure of your interest in the lightbulb sales with the Town Clerk and the Board of Selectmen vote to exempt your lightbulb sales from the restrictions of section 20.

For more information about restrictions on holding an interest in municipal contracts, contact your city solicitor or town counsel or the Legal Division of the State Ethics Commission.

Section 20 -- Restrictions on Holding Multiple Municipal Positions

Because the restrictions of section 20 also apply to employment contracts, municipal employees are generally prohibited from holding more than one municipal position. However, there are many exemptions to this general prohibition. If you are a municipal employee -- regular or "special", you may:

- hold any number of unpaid positions, because you do not have a financial interest in any of the positions (however, if you hold even one paid appointed position, you must look for other exemptions);
- hold any number of elected positions, whether paid or unpaid, because you serve in those positions by virtue of your election, rather than because of an appointment or employment contract (however, if you hold even one paid appointed position, you must look for other exemptions); and
- in some instances, you may hold more than one paid appointed position, provided that the jobs are in separate departments (which do not have overlapping responsibilities) and all paid jobs have been publicly advertised. However, your board of selectmen, board of aldermen, town council or city council must vote to exempt you from section 20, and there are also other requirements you must meet. For more information, see Advisory No. 7: Multiple Office Holding from the State Ethics Commission, or contact your town counsel or city solicitor or the State Ethics Commission's Legal Division.
- If you serve in a town with a population of less than 3,500, you may hold more than one position with the town if the board of selectmen formally approves the additional appointments.

If you are a "special municipal employee", you may also:

- hold any number of other "special municipal employee" positions, provided that the positions are with totally independent departments and you file a disclosure of your financial interest in all the positions with the city or town clerk;
- hold any number of other "special municipal employee" positions, even if the departments' jurisdictions overlap, provided that you file a disclosure of your financial interest in all the positions with the city or town clerk, and the board of selectmen, board of aldermen, town council or city council vote to exempt you from section 20.

Example: As a Cemetery Commissioner, you are a "special municipal employee."

- You may also hold "special municipal employee" positions on the Board of Library Trustees and on the Waterways Commission, because the three positions are completely independent of each other. However, you must file a disclosure of your financial interest (e.g., stipends, per diem payments, salary) in the positions with the Town Clerk.

If you wish to hold a "special municipal employee" position with the Department of Public Works (which maintains buildings on the cemetery grounds) or as the town's Tree Warden (who cares for the trees on the cemetery grounds), you must file a disclosure of your financial interest in the positions with the Town Clerk, and the Board of Selectmen must vote to exempt you from section 20.

For more information about holding more than one municipal position, request Advisory No. 7: Multiple Office Holding from the State Ethics Commission, or contact your town counsel or city solicitor or the State Ethics Commission's Legal Division.

* * *

The definition of "special municipal employee" can be found in section 1(n) of the conflict of interest law (G.L. c. 268A). Note that town councils are empowered by G.L. c. 39, section 1 to exercise all duties and powers of boards of aldermen.

* * *

Commission Fact Sheets are prepared and issued by the Public Education Division of the State Ethics Commission. They are intended to provide guidance to public officials and employees concerning practical applications of the conflict law. For further information, contact your town counsel or city solicitor, or the Legal Division of the State Ethics Commission.

ISSUED: May 1987

REVISED: March 1990

REVISED: January 1991
REVISED: August 1992



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Advisory 84-02: Municipal Districts and Authorities and Their Special Municipal Employees

The conflict of interest law, Chapter 268A of the General Laws, applies to all municipal employees, whether elected or appointed, full-time or part-time, paid or unpaid. The law, however, creates a category of employees called "special municipal employees" to whom the law in some instances will apply in a less restrictive way.

Questions have been raised as to:

- * whether members and employees of agencies that operate independently of city or town governments, whether within the boundaries of a single municipality or as regional agencies, are also covered by the law,
- * whether such members and employees may be made "special municipal employees," and
- * if so, by whom.

Typical examples of municipal agencies that operate independently of city and town governments are local housing authorities, local water and fire districts and regional school districts. The above questions take on added importance because often members and employees of such authorities or districts have contracts with or hold other appointive positions in the same authority or district. Moreover, members or employees of authorities and districts sometimes also hold positions in other city or town agencies. The propriety of their doing so will turn on whether they are covered by the conflict law and, if so, whether they may be considered "specials."

I. MUNICIPAL AGENCIES THAT OPERATE INDEPENDENTLY OF CITY AND TOWN GOVERNMENTS

"Municipal employee" is defined as anyone "performing services for or holding an office, position, employment or membership in a municipal agency." See G.L. c. 268A, § 1(g). "Municipal agency," in turn, is defined as "any department or office of a city or town government and any council, division board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder." See § 1(f). Given these broad definitions, local housing authorities and local water and fire districts are municipal agencies for purposes of the conflict law, and their members and employees are municipal employees. They perform governmental functions at the municipal level.

The Legislature has explicitly provided that certain agencies that operate independently of city and town governments will be considered municipal agencies for purposes of the conflict of interest law. See, e.g., G.L. c. 121B, § 7 (housing authority is a municipal agency for purposes of the conflict of interest law).

The Ethics Commission has also considered the application of the conflict of interest law to regional entities and their employees. The most common example of a regional entity is a regional school district. In 1992, the Appeals Court affirmed a Commission decision finding that members of a regional school committee are municipal employees for purposes of the conflict of interest law. In doing so, the Court concluded that a regional school committee is an instrumentality of each of the member municipalities. *McMann v. State Ethics Commission*, 32 Mass. App. Ct. 421, 428 (1992). In other words, for purposes of the conflict of interest law, the Commission will not consider regional districts to be independent of their member municipalities. Therefore, the employees of the regional entity will be municipal employees of each of the municipalities that make up the regional district.

II. SPECIAL MUNICIPAL EMPLOYEES

May members and employees of these authorities and districts be designated as "special municipal employees"? Whether a member or employee of an authority or district is classified as a "special" will affect his or her eligibility to hold, and be compensated for, some other position within the supervision of that authority or district or to otherwise contract with the authority or district (or any of the cities and towns that comprise the district).

Section 1(n) of G.L. c. 268A provides that municipal employees are classified as "specials" by the Board of Selectmen or City Council (or Board of Alderman if there is no City Council) in that municipality. Thus, the law gives the appropriate Board of Selectmen or City Council the designating responsibility and makes no distinction as to which agencies might be involved. Simply put, the Selectmen or Council has this authority, regardless of the degree to which the Board or Council supervises the work of the agency. Accordingly, members and employees of an authority or district may be designated as "specials" just as any other municipal employees. In making its decision, the Board of Selectmen or City Council will use

the guidelines set out in the statute. That is:

1. the person must either:
 - a. receive no compensation,
 - b. work less than 800 hours a year, or
 - c. occupy a position which "permits personal or private employment during normal working hours."
2. the Board or Council must be consistent, i.e., treat people who hold equivalent positions in the same way.

The Legislature has explicitly answered the question of special municipal employee status with regard to members and employees of local housing authorities. The statute establishing such authorities states that "each member of a [a housing and redevelopment authority] . . . shall be considered a special municipal employee." Additionally, any person who performs professional services on a part-time, intermittent or consultant basis (such as architect, attorney, engineer, planner, etc.) for a housing or redevelopment authority shall also be a special municipal employee. See G.L. c. 121B, § 7. In so doing, the Legislature was careful to point out that the Board of Selectmen, Board of Alderman or City Council was not precluded from making other employees of such authorities "specials."

Similarly, with regard to local fire districts, the Legislature has determined that part-time fire fighters and any person who performs professional services on a part-time, intermittent or consultant basis shall be considered a special municipal employee for purposes of the conflict of interest law. See G.L. c. 48, § 90. As for those employees who are not specified as special municipal employees by statute, the guidelines set out in the definition of "special municipal employee" will be applicable.

With regard to employees of regional entities, the Commission has decided that an employment position or a board position within a regional entity may be designated as a special municipal employee position if so classified by vote of the Board of Selectmen or City Council of **all** of the member municipalities.

A district or authority employee, whose position is not a "special municipal employee" position, would violate § 20 of G.L. c. 268A if that individual held another position with that same authority or district or any of the municipalities that comprise a district. ⁽¹⁾ However, as a special, an employee or member will be eligible for an exemption from § 20 ⁽²⁾ as long as:

1. he or she files with their city or town clerk a statement making full disclosure of the other employment relationship; and
2. the City Council or Board of Selectmen give its approval to having that position.

Here again, the Board of Selectmen or City Council has a crucial role to play. And, here again, it does not matter whether the Board or Council otherwise participates in any aspect of the authority or district. As for regional entities, the above exemption will require approval from the Board of Selectmen or City Council of all of the member cities or towns.

In summary, we provide you with the following examples:

If you are a member or employee of a local housing authority:

1. you are automatically a "special municipal employee" if you are a member, or if you are providing professional services on a part-time, intermittent or consultant basis; otherwise you will not be considered a special unless the City Council or Board of Selectmen designates your position as such; and
2. as a special, you may hold another position with the authority provided your City Council or Board of Selectmen approves, and you file the required disclosure statement with your City or Town Clerk.

If you are a member or employee of a local fire district:

1. you will be considered a special employee if you are a part-time firefighter or if you provide professional services on a part-time, intermittent or consultant basis; and
2. if you are a special, you may hold another position with the district provided:
 - a. you file the required disclosure statement with the district clerk, and
 - b. the district prudential committee approves. ⁽³⁾

If you are a member or employee of a regional school district:

1. you are not a "special municipal employee" unless the City Council or Board of Selectmen of all of the member municipalities designates your position as such; and
2. if so designated, you may hold another position or contract with the district provided:
 - a. you file the required disclosure with the school district clerk, and

b. the City Council or Board of Selectmen of all of the member municipalities approves. ⁽⁴⁾

This advisory does not attempt to explain all the provisions of the conflict law applicable to "special municipal employees." You are advised to call the State Ethics Commission's Legal Division if you seek to contract with or be employed by a municipal agency in addition to your position with an authority or district.

DATE AUTHORIZED: May 29, 1984

REVISED: November 5, 1992

¹ If an employee or board member holds a position in another municipal agency of any constituent city or town, the exemption provided in § 20(c) may be applicable. This requires only that a special municipal employee make a written disclosure to the municipal and district clerk.

² Section 20 prohibits a municipal employee from having a financial interest in a contract with his or her city or town. Other employment contracts are included within this prohibition. The § 20(d) exemption outlined above would also be available to members and employees who are specials and who have other kinds of contracts with their authority or district (for example, contracts to provide services, to sell equipment, etc.).

³ There are additional restrictions on district boards or authorities concerning their ability to appoint a member to a position under the supervision of that board or commission. See G.L. c.41, § 4A; c. 268A, § 21A.

⁴ If you hold a position with an agency of one of the constituent cities or towns, this approval may not be necessary.