

# Attachment A

<b>Part II</b>	REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS
<b>Title I</b>	TITLE TO REAL PROPERTY
<b>Chapter 188</b>	HOMESTEADS
<b>Section 1</b>	DEFINITIONS

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Section 1. For the purposes of this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Automatic homestead exemption", an exemption in the amount of \$125,000 pursuant to section 4; provided, however, that: (1) with respect to a home owned as joint tenants or as tenants by the entirety, the automatic homestead exemption shall remain whole and unallocated between the owners, provided that the owners together shall not be entitled to an automatic homestead exemption in excess of \$125,000; and (2) with respect to a home owned by multiple owners as tenants in common or as trust beneficiaries, the automatic homestead exemption shall be allocated among all owners in proportion to their respective ownership interests.

"Declared homestead exemption", an exemption in the amount of \$500,000 created by a written declaration, executed and recorded pursuant to section 5; provided, however, that: (1) with respect to a home

owned by joint tenants or tenants by the entirety who are benefited by an estate of homestead declared pursuant to section 3, the declared homestead exemption shall remain whole and unallocated, provided that the owners together shall not be entitled to a declared homestead exemption in excess of \$500,000; (2) if a home is owned by tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to said section 3 shall be the product of: (i) \$500,000; and (ii) the co-tenant's or trust beneficiary's percentage ownership interest; (3) except as provided in clause (4), each person who owns a home and who is benefited by an estate of homestead declared pursuant to section 2 shall be entitled to the declared homestead exemption without reduction, proration or allocation among other owners of the home; and (4) separate estates of homestead may be declared pursuant to sections 2 and 3 on the same home, and in such event: (i) if the home is owned by tenants in common or trust beneficiaries, the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section 3 shall be calculated in the manner provided in clause (2), and the declared homestead exemption for each co-tenant and trust beneficiary who benefits by an estate of homestead declared pursuant to section 2 shall be calculated in the manner provided in clause (3); or (ii) if the home is owned by joint tenants or tenants by the entirety, the declared homestead exemption for the owners together shall be the sum of \$500,000 multiplied by the number of declarations recorded pursuant to section 2, plus \$250,000; provided, however, that the homestead exemption under this subclause shall remain whole and unallocated among the owners; and provided further, that no owner who declares a homestead, acting

individually, shall be entitled to claim an exemption of more than \$500,000; and (5) the calculation of the amount of homestead exemption available to an owner shall not sever a joint tenancy or tenancy by the entirety.

"Disabled person", an individual who has a medically-determinable, permanent physical or mental impairment that would meet the disability requirements for Supplemental Security Income under 42 U.S.C. 1382c(a)(3)(A) and 42 U.S.C. 1382c(a)(3)(C) as in effect at the time of recording.

"Elderly person", an individual 62 years of age or older.

"Family" or "family members", (1) married individuals, both of whom own a home, and any minor child; (2) a married individual who owns a home, a non-titled spouse of the married individual and any minor child; or (3) an unmarried individual who owns a home and any minor child.

"Home", the aggregate of: (1) any of the following: (i) a single-family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (ii) a 2 to 4-family dwelling, including accessory structures appurtenant thereto and the land on which it is located; (iii) a manufactured home as defined in section 32Q of chapter 140; (iv) a unit in a condominium, as those terms are defined in section 1 of chapter 183A, that is used for residential purposes; or (v) a residential cooperative housing unit established pursuant to chapters 156B, 157B, 180 or otherwise; (2) the sale proceeds as provided in clause (1) of subsection (a) of section 11; and (3) the proceeds of any policy of insurance insuring the home against fire or other casualty loss as provided in clause (2) of said subsection (a) of said section 11.

"Minor child", a person aged 21 and under, who is the natural or adopted child of an owner or owner's spouse entitled to the benefits of this chapter, notwithstanding any law to the contrary.

"Owner", a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant in common, life estate holder or holder of a beneficial interest in a trust.

"Principal residence", the home where an owner, and the owner's family if applicable, resides or intends to reside as the primary dwelling; provided, however, that no person shall hold concurrent rights in more than 1 principal residence.

"Record", "recording" or "recorded", the act of recording in the registry of deeds or the registry district of the land court for the county or district wherein the home lies, except that with respect to a manufactured home located on registered land, recording in the registry of deeds shall be sufficient.

# Attachment B



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## **Boston Redevelopment Authority v. Pham**

Appeals Court of Massachusetts

October 1, 2015, Argued; December 9, 2015, Decided

No. 14-P-1734.

### Reporter

88 Mass. App. Ct. 713 \*; 42 N.E.3d 645 \*\*; 2015 Mass. App. LEXIS 186 \*\*\*

**BOSTON REDEVELOPMENT AUTHORITY vs. JEFFREY PHAM**  
& another.<sup>1</sup>**Prior History:** [\*\*\*1] Suffolk. CIVIL ACTION commenced in the Superior Court Department on December 1, 2010.The case was heard by *Bonnie H. MacLeod*, J., and a motion for attorney's fees and costs was heard by her.

### Core Terms

covenant, deed, roommates, occupy, lease, principal residence, attorney's fees, premises, costs, affordable housing, documents, housing costs, restrictions, purposes, condominium, occupation, ambiguous, travel, renting, supplemental, household, bedroom, by-laws, monthly

### Case Summary

#### Overview

HOLDINGS: [1]-The trial court properly dismissed a housing authority's complaint against a condominium unit owner because the owner did not violate any deed or other covenants when he took in a succession of roommates to share the space and defray the unit's carrying costs where he, inter alia, neither leased nor owned property elsewhere despite his extensive work-related travel, was physically present there one to two weeks per month, maintained his valuable personal possessions there, and identified the unit as his address for tax and other official purposes; [1]-The trial court properly denied the owner's application for his "actual" attorney's fees and costs because it was appropriate to

limit the award to an amount that was fair and reasonable where the provision at issue was part of an affordable housing covenant.

### Outcome

Judgment and order affirmed.

### LexisNexis® Headnotes

Contracts Law &gt; Contract Interpretation

Real Property Law &gt; Deeds &gt; Construction &amp; Interpretation

Real Property Law &gt; Encumbrances &gt; Restrictive Covenants

#### [HN1](#) [↓] **Contracts Law, Contract Interpretation**

In interpreting a deed, as with any contract, courts must construe all words that are plain and free from ambiguity according to their usual and ordinary sense. Deed restrictions are, however, to be strictly construed against the party seeking to enforce them.

Contracts Law &gt; Contract Interpretation &gt; Ambiguities &amp; Contra Proferentem

Real Property Law &gt; Deeds &gt; Construction &amp; Interpretation

Real Property Law &gt; Encumbrances &gt; Restrictive Covenants

<sup>1</sup>Andrew Carpentier. A stipulation of dismissal as to Carpentier was entered in the Superior Court on May 31, 2011.

#### [HN2](#) [↓] **Contract Interpretation, Ambiguities & Contra Proferentem**

Where a person's right to use his or her own property is involved, any ambiguity in an asserted restriction should be construed in favor of the freedom of the property from that restriction. This is consistent with the general rule that ambiguous contractual language is construed against its author. Words that are clear and unambiguous, by themselves, may be ambiguous when read in the context of the entire instrument, or as applied to the subject matter.

Real Property Law > Deeds > Construction & Interpretation

### [HN3](#) Deeds, Construction & Interpretation

In a deed context, the word "residence" is a word of flexible meaning.

Real Property Law > Deeds > Construction & Interpretation

### [HN4](#) Deeds, Construction & Interpretation

In a deed context, "residence" is a word of varied meanings, ranging from domicil down to personal presence with some slight degree of permanence.

Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > Domicile

Estate, Gift & Trust Law > ... > Probate Proceedings > Jurisdiction > Domicile

### [HN5](#) In Personam Actions, Domicile

"Domicile" has been defined as the place of one's actual residence with intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode.

## Headnotes/Summary

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### Headnotes

MASSACHUSETTS OFFICIAL REPORTS  
HEADNOTES

*Housing > Redevelopment Authority > Deed > Real Property > Deed > Condominium > Condominiums > By-laws > Master deed > Practice, Civil > Findings by judge > Attorney's fees*

The defendant owner of a condominium unit did not violate certain affordable housing restrictions established by the plaintiff municipal redevelopment authority requiring the defendant to maintain his unit as his principal residence and prohibiting him from leasing his unit for business or investment purposes, where the defendant continued to occupy his unit as his principal residence despite his extensive work-related travel [717-720]; and where he did not violate any provision of the deed rider covenant for affordable housing, master deed, or condominium trust by-laws by taking in a succession of roommates to share the space and defray the carrying costs of the unit [720-723].

In a civil action in which attorney's fees and costs were awarded to the defendant, who was the prevailing party, on the basis of a condominium unit deed rider covenant for affordable housing that entitled him to his "actual" attorney's fees, the judge did not err in limiting the award to an amount that was fair and reasonable. [723-724]

**Counsel:** *Edward S. Englander (Shannon F. Slaughter with him)* for the plaintiff.

*James A. Schuh* for Jeffrey Pham.

**Judges:** Present: KAFKER, C.J., KATZMANN, & RUBIN, JJ.

**Opinion by:** KAFKER

## Opinion

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[\*\*646] KAFKER, C.J. In this case we must decide whether Jeffrey Pham violated affordable housing restrictions established by the Boston Redevelopment Authority (BRA) that (1) required Pham to maintain his condominium unit as his principal residence, and (2) prohibited him from leasing his unit for business or investment purposes. As we discern no error in the Superior Court judge's determination that Pham continued to occupy his condominium unit as his principal residence despite his extensive work-related travel, and that he did not violate any deed or other covenants when he took in a succession of roommates



to share the space and defray the carrying costs of the unit, we affirm.

[\*\*647] 1. *Background.*<sup>2</sup> a. 2007 purchase of affordable housing unit. Having won a housing lottery and been approved [\*\*\*2] by the BRA, on June 1, 2007, Jeffrey Pham purchased unit 413, a two-bedroom affordable condominium unit at 2400 Beacon Street in the Chestnut Hill section of Boston (unit or premises). His application stated that his sister, a college student, would live in the unit with him. Pham signed a number of documents relative to his purchase of the unit, including the unit deed, a deed rider covenant for affordable housing (covenant), a note, and a mortgage identifying the BRA as the mortgagee. In addition, recorded with the unit deed is an affirmation signed by Pham accepting the unit deed and agreeing to its provisions along with the provisions of the master deed and declaration of trust,<sup>3</sup> including the by-laws and rules and regulations adopted by the trustees of the condominium. Both as part of his application and yearly thereafter, Pham executed an affidavit averring that he occupied the unit as his principal residence.

The purpose of the covenant, as stated in its preliminary statement, “is to provide a uniform plan for administration and enforcement of covenants and restrictions imposed upon real property by the City of Boston and the Boston Redevelopment Authority ... [to] regulat[e] the development of real property for housing for persons of moderate and middle income.” The covenant is imposed “to mitigate the impacts of market rate housing on the supply and costs of housing for moderate and middle income households.” More simply, “With this help, many families who could not afford to purchase a home in the private market will be able to own their own home.”

[\*715] The covenant constitutes a part of the consideration paid for affordable housing properties.

<sup>2</sup>The facts underlying this case were developed in a jury-waived trial. The BRA called three witnesses: Andrea Laing, the Assistant Director of Affordable Housing Compliance at the BRA during the relevant time period; Carpentier, Pham's last roommate; and Pham. Pham testified [\*\*\*3] on his own behalf and did not call any other witnesses. Twenty-nine exhibits were admitted in evidence.

<sup>3</sup>The declaration of trust establishes an organization of unit owners to hold, exercise, manage, and administer the common elements of the condominium for the benefit of the unit owners pursuant to G. L. c. 183A.

The covenant defines “Premises” as “the real property conveyed by or described in the Deed ... .” Section 4 of the covenant provides:

“[t]he Owner shall occupy the Premises as [\*\*\*4] his ... principal residence. Notwithstanding the foregoing, Owner may lease the Premises only upon receiving prior written approval from the [BRA], provided that the rent paid by the lessee is not greater than one hundred fifteen percent (115%) of the Owner's then current monthly housing costs.”

The mortgage itself does not contain any restrictions on rentals or roommates, but does provide that it secures the repayment of the indebtedness and the covenants and restrictions set forth in the note, the mortgage, “and in all other documents now or hereafter executed by the Mortgagor incident to Mortgagor's purchase of the Premises ... .” The BRA points to two of those documents, the master deed and the by-laws of the condominium trust, as prohibiting Pham's conduct.<sup>4</sup>

[\*\*648] Section 7 of the master deed is entitled “Use of Units and Common Elements.” Section 7A of the master deed first restricts the general use of units to residential purposes only, “with no more than two (2) unrelated persons per bedroom ... .” Section 7B of the master deed provides:

“It is the Intent of this Master Deed that the Units shall be owner-occupied, and that any owner-occupant requirements of the Affordable Housing Agreement and the LDA be strictly enforced.<sup>5</sup> Therefore, the leasing of Units to others as a regular practice for business, speculative, investment or other similar purpose shall not be

<sup>4</sup>Pham filed a motion in limine seeking to prevent the BRA from relying on anything other than the covenant, as no other document was brought to Pham's attention by the BRA's presuit communications, complaint, or discovery. The record does not reflect the action the judge took on the motion except that her decision does discuss the master deed and declaration of trust, indicating that she at least implicitly denied the motion. [\*\*\*5] Pham does not specifically argue that the judge erred in denying the motion. Given that the documents are incorporated by reference in the documents that were cited in the briefs on appeal, we discern no error in the judge's consideration of them.

<sup>5</sup>The master deed defines LDA as the “Amended and Restated Land Disposition Agreement.” Neither the LDA nor the affordable housing agreement are contained in the record.

permitted. Additionally, [\*716] and notwithstanding any other provision herein to the contrary, no Affordable Unit may be occupied by anyone other than its owner or leased to anyone without the express written consent in advance of the municipality as set forth in the LDA. To meet special situations and to avoid undue hardship in particular instances, the Trustees may grant [\*\*\*6] permission to a Unit Owner to lease the Unit Owner's Unit to a specified lessee for a period of not less than twelve consecutive months and not more than eighteen consecutive months."

Section 18A of the by-laws of the trust addresses rentals permitted by § 7B of the master deed. It provides that any lease of the premises shall be in writing "and apply to the *entire* Unit and not merely a portion thereof" (emphasis added).

**b. Pham's use of unit.** Pham admitted at trial that after his sister moved out in late 2009, he had a succession of roommates who contributed to the payment of his housing costs. He allowed the roommates to use the master bedroom and he used the smaller bedroom vacated by his sister. Pham shared the rest of the unit with the roommates. He had no formal lease or contract arrangement with them.

The record reveals that Pham's total monthly housing costs were approximately \$3,000 and the most any roommate paid was \$1,500 per month. There is no suggestion in the record that Pham received money approaching or exceeding his total [\*\*\*7] housing costs. His last roommate departed in May, 2011.

It is uncontested that Pham traveled extensively for his job. He conceded he frequently was absent from the unit, even for weeks at a time. He traveled to South Carolina, where the business he worked for was based, and he also traveled abroad for work. In addition, he spent time in New Jersey where his girlfriend, now wife, lived. He continued to use the unit, however, as his home base. He kept the majority of his "valuable possessions" in the unit. The master bedroom and common living areas remained furnished with his furniture. The utilities remained in his name and he paid those bills. He identified the unit as his address for tax purposes. Furthermore, during the period in question, he did not rent or buy a residence in either South Carolina or New Jersey. He testified he frequently stayed with his boss when in South Carolina.

**c. BRA investigation.** The first complaints claiming that Pham was not occupying his unit came to the BRA from

a trustee of the [\*717] condominium in or about [\*\*649] April, 2010. In the course of correspondence over the ensuing weeks, the trustee alleged that Pham had been renting out his unit for over a year and, as [\*\*\*8] a trustee, had missed all but one trustee meeting. Following some communications with Pham, the BRA informed him by letter on August 4, 2010, that he was in violation of the covenant and requested a meeting with him, apparently as part of its investigation. By letter dated October 21, 2010, the BRA informed Pham that its investigation had been completed and that it had concluded that he was "in violation of Section 4 of the Covenant because he [did] not occupy the Unit and he ha[d] leased the Unit without the prior written approval of the BRA." The BRA indicated it would bring legal action against him if he did not, among other things, (i) provide proof that his current tenant or roommate no longer resides at the premises; (ii) account for and present a plan to pay to the BRA any monies received from roommates; and (iii) arrange to sell the unit to another qualified buyer within six months. Pham did not comply with the BRA's requests.

On December 1, 2010, the BRA filed a complaint in the Superior Court, alleging that Pham violated the covenant and his mortgage by (i) failing to occupy the premises as his principal residence and (ii) renting the premises without the permission of the BRA. The BRA [\*\*\*9] sought an accounting in addition to an order instructing Pham to convey the unit to a qualifying affordable housing buyer.

The judge concluded that Pham continued to occupy the unit as his principal residence.<sup>6</sup> With regard to renting the unit, the judge found that the covenant and other documents do not clearly prohibit him from having a roommate, even one who contributes to the monthly housing costs, without the BRA's approval. The judge dismissed the BRA's complaint and, pursuant to the covenant, awarded Pham attorney's fees. The BRA appeals and Pham cross appeals, claiming that the judge should have awarded his "actual" fees, without reduction.

2. *Discussion.* Principles of deed and contract interpretation guide our discussion of the issues. [HN1](#) [↑] In interpreting a deed, as with any contract, we "must construe all words that are plain and free from ambiguity according to their usual and ordinary sense." [Suffolk Constr. Co. v. Lanco Scaffolding Co., 47 Mass.](#)

<sup>6</sup>The judge also pointed to the fact that the BRA served the complaint on Pham at the unit.

App. Ct. [\*718] 726, 729, 716 N.E.2d 130 (1999). Deed restrictions are, however, “to be strictly construed against the party seeking to enforce” them. Walker v. Gross, 362 Mass. 703, 706, 290 N.E.2d 543 (1972). See Kline v. Shearwater Assn., Inc., 63 Mass. App. Ct. 825, 830-831, 830 N.E.2d 235 (2005). HN2 [↑] “Where a person’s right to use his or her own property is involved, any ambiguity in an asserted [\*\*\*10] restriction ... should be construed in favor of the freedom of the property from that restriction.” Johnson v. Keith, 368 Mass. 316, 320, 331 N.E.2d 879 (1975). This is also consistent with the general rule that ambiguous contractual language is construed against its author. See Beatty v. NP Corp., 31 Mass. App. Ct. 606, 612, 581 N.E.2d 1311 (1991). Finally, “[w]ords that are clear and unambiguous, by themselves, may be ambiguous when read in the context of the entire [instrument], or as applied to the subject matter.” Jefferson Ins. Co. of N.Y. v. Holyoke, 23 Mass. App. Ct. 472, 475, 503 N.E.2d 474 (1987).

[\*\*650] a. Occupancy as principal residence. Section 4 of the covenant unambiguously requires Pham to occupy the unit as his principal residence. Whether Pham occupied the unit as his principal residence is a mixed question of law and fact. Shepard v. Finance Assocs. of Auburn, Inc., 366 Mass. 182, 189, 316 N.E.2d 597 (1974). As the party seeking to enforce the principal residence requirement, the burden was on the BRA to prove that Pham failed to occupy the unit as his principal residence, and we review the judge’s findings for clear error. See Dotson v. Commissioner of Rev., 82 Mass. App. Ct. 378, 384, 974 N.E.2d 69 (2012) (burden of proof of change of domicile falls on party asserting change).

The phrase “occupy as principal residence” is not defined in the covenant or elsewhere. The BRA points to application materials where a preference is given to “Boston Residents,” defined as persons who “normally eat[ ], sleep[ ] and maintain [their] normal personal and household effects” [\*\*\*11] in Boston, and suggests that those same parameters and other parameters, such as frequency of physical presence, govern the analysis. The BRA’s main contention is that Pham was not physically present in the unit enough to satisfy the occupancy requirement.

The Supreme Judicial Court has noted that “[t]he main lesson to be drawn from our cases interpreting the meaning of HN3 [↑] the word ‘residence’ is that it is a word ‘of flexible meaning.’” Shepard, 366 Mass. at 190. HN4 [↑] “Residence is a word of varied meanings,

ranging from domicile<sup>7</sup> down to personal presence with some slight degree of permanence.” Rummel v. Peters, 314 Mass. 504, 511, 51 N.E.2d 57 [\*719] (1943). While it was certainly open to the BRA to draft the covenant in such a way as to impose a minimum number of days per week, month, or year of physical presence to the occupancy requirement, it did not do so.<sup>8</sup> The judge, therefore, reasonably considered multiple factors in determining whether Pham maintained the unit as his principal residence, including his living arrangements elsewhere. Those factors recounted by the judge in her findings establish that the unit was Pham’s principal residence as he neither leased nor owned property elsewhere, and despite his extensive travel necessitated by his employment, he continued to use the [\*\*\*12] unit as his home base. There was testimony that Pham retained a room in the unit and was physically present in the unit one to two weeks per month. He maintained his valuable personal possessions there. He identified the unit as his address for tax and other official purposes and the BRA served him there. The utilities remained in his name and he paid the bills.<sup>9</sup>

We discern no intention reflected in the BRA documents to prevent purchasers [\*\*651] of affordable housing units from pursuing or taking jobs that require frequent travel, provided they maintain the affordable housing unit as their home base. Indeed, any such restrictions on employment appear inconsistent with the goals of assisting persons of moderate and middle income to thrive in difficult economic circumstances as reflected in

<sup>7</sup> HN5 [↑] “Domicil has been defined as ‘the place of one’s actual residence with intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode.’” Caffyn v. Caffyn, 441 Mass. 487, 492, 806 N.E.2d 415 (2004), quoting from Fiorentino v. Probate Ct., 365 Mass. 13, 17 n.7, 310 N.E.2d 112 (1974).

<sup>8</sup> The BRA representative testified that there was no rule regarding the number of days Pham had to be physically present in the unit, as long as it remained his primary residence.

<sup>9</sup> The judge was not required to draw an adverse inference from Pham’s initial failure to change his license and car registration to his Boston address from his parents’ home in Northborough, where he often garaged his car. There was no indication that he made any other use of his parents’ home and the BRA does not suggest he resided there. When the BRA brought the oversight to his attention, he changed [\*\*\*13] both and by the time of trial, the judge noted that his driver’s license and car registration bore the address of the unit.

the covenant. While Pham's frequent absences required careful inquiry on the primary residence question, the judge undertook such an inquiry and reasonably concluded that Pham's principal residence remained unchanged, despite the travel necessitated by his employment and desire to see his out-of-town girlfriend, who eventually became his wife.

In sum, in these circumstances, we discern no error in the judge's determination that Pham did in fact occupy the unit as his principal residence throughout the period in question.<sup>10</sup>

b. *Roommates*. We turn next to the question whether Pham violated provisions in the covenant, master deed, and trust by-laws when he replaced his sister with roommates who contributed as much as \$1,500 toward his \$3,000 monthly housing costs in return for their use of the master bedroom suite and shared space. The express intention of the documents is to promote and require owner occupation of the unit as a personal residence. See § 4 of the covenant (“The owner shall occupy the Premises”); §§ 7A and 7B of the master deed (“The units are to be used only for residential purposes by the Unit Owner and members of the Unit Owner's household unit”; “the Units shall be owner-occupied”). Consistent with this purpose, the documents together explicitly prohibit the unit owner's right to lease the unit for business, speculative, investment, or other purposes. See § 7B of the master deed (“the leasing of Units to others as a regular practice for business, speculative, investment or other similar purpose shall not be permitted”). All these prohibitions, and the associated remedies, are directed at the leasing of the entire unit. See § 18A of the by-laws (“To the extent that a Unit Owner is permitted to lease its Unit as set forth in Section 7.B of the Master Deed, any lease or rental agreement ... shall ... apply to the entire Unit and not merely a portion thereof); § 20(c) of the covenant (for prohibited leases, BRA shall be entitled to “money damages for charges in excess of maximum rents”). As we have previously concluded, Pham is an owner occupier of the unit for residential purposes. He has not leased the entire unit for business, speculative, or investment purposes. Rather, he has brought in

roommates who pay a portion of his carrying costs of the unit.

None of the documents expressly prohibits subleases, roommates, lodgers, or boarders as it could have done.<sup>11,12</sup> At [\*\*652] oral [\*721] argument, the BRA conceded that roommates are not prohibited nor do they require prior approval as long as they are family members or close personal friends. The BRA rather contends that having paid roommates who are not family members or friends transforms [\*\*\*16] the use of the unit into a “business” or other use prohibited by the master deed. We disagree. As the judge found, Pham is using the unit as his primary residence and accepting roommates to defray his carrying costs. Section 7A of the master deed also specifically provides that unrelated persons may occupy the unit. The covenant contains a broad definition of household: “all persons who reside or intend to reside together at the Premises.” Neither the master deed nor the covenant prohibits unrelated or unfamiliar persons from living together, nor does either require BRA approval of household members. We therefore discern no support for the BRA's assertion that only family members or persons with close personal

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<sup>11</sup> The concepts of lodger or licensee may more aptly describe the relationship between Pham and his roommates than landlord-tenant. See *Warshaw*, Massachusetts Landlord-Tenant Law § 1.9, at 18 n.31 (2d ed. 2001), quoting from *Hall*, Massachusetts Landlord-Tenant Law § 3, at 3 (1949) (if party does not “have exclusive possession of premises against all the world including owner,” there is no tenancy but [\*\*\*17] rather party is licensee). We noted in *Hall v. Zoning Bd. of Appeals of Edgartown*, 28 Mass. App. Ct. 249, 254, 549 N.E.2d 433 (1990), quoting from Webster's Third New International Dictionary 1329 (1971), that the dictionary definition of lodger is “one who by agreement with the owner of housing accommodations acquires no property, interest, or possession therein but only the right in accordance with the agreement to live in and occupy a room or other designated portion therein that still remains in the owner's legal possession.” The lodger has no interest in the real property but only a contractual relationship with the owner. See *ibid.* A roommate, most commonly, is a mere licensee. *Warshaw*, Massachusetts Landlord-Tenant Law § 1.9[C].

<sup>12</sup> In contrast, a sample Boston Housing Authority lease specifically provides that a resident “agrees not to assign this lease, not to sublet or transfer possession of the Apartment, not to take in boarders or lodgers and not to use or permit the use of the Apartment for any purpose other than as a private dwelling solely for Resident and the individuals specifically listed on this lease or listed on a subsequent written Lease Addendum.” *Daher & Chopp*, Landlord and Tenant Law § 22.18, at 143 (3d ed. 2001).

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<sup>10</sup> The BRA contends that the judge erred in declining to grant its motion for relief from judgment because it learned that after [\*\*\*14] trial, in February of 2014, Pham purchased a home with his wife in New Jersey. The judge correctly denied the motion as involving posttrial events, and “thus not relevant in any way.” The record does reflect that Pham sold the unit in due course after purchasing the New Jersey home.

relationships may live as a roommate with the owner without transforming it into a business investment.

The fact that a roommate pays a portion of the unit owner's carrying [\*\*\*18] costs is a factor to consider in our legal analysis of the restrictions and prohibitions in the different documents, but it is not dispositive. As the judge points out, Pham's housing costs exceeded fifty percent of even his pretax monthly income. It would have been difficult indeed for Pham to maintain his personal housing costs without the assistance of first his parents on behalf of his sister (something that the BRA acknowledges in its brief on appeal) and then the roommates who shared the unit with him. The controlling documents do not prohibit Pham from making the personal financial decision to share his housing unit [\*722] with a roommate who is not a family member or friend in order to reduce his costs and make the unit more affordable. If the BRA intended to preclude such a decision, with the resulting financial pressures it thereby places on the moderate and middle income owner occupiers it intends to serve, it must do so unambiguously. Compare Boston Housing Authority lease provision quoted in note 12, *supra*.

In so concluding, we acknowledge the sentence in § 7B of the master deed, which states, "no Affordable Unit may be *occupied* by anyone other than its owner or leased to anyone without [\*\*\*19] the express written consent in advance of the municipality as set forth in the LDA" (emphasis added). This single sentence regarding occupation has not been a focal point of the litigation. The BRA never identified this language in the master deed when it notified Pham that he was in violation of the covenant, nor did it identify this language in the complaint as purporting to require prior BRA approval of roommates. The sentence, and the potentially broad controlling sweep of its restriction regarding occupation of the unit, has not been repeated [\*\*653] elsewhere in the extensive documentation governing the unit. The absence of such language from the covenant, the principal document governing the affordable housing aspect of the transaction, is conspicuous. There are also no specific financial remedies for unauthorized roommates, lodgers, boarders, or others sharing the unit and its expenses with the owner.

Indeed, situated as it is between provisions requiring owner occupation and controlling rental of the entire unit, it remains unclear to us whether this sentence in § 7B requires written consent for a person to occupy a room and shared space in the unit when the owner also continues to occupy [\*\*\*20] the unit. See *Jefferson Ins.*

*Co. of N.Y., 23 Mass. App. Ct. at 475* (ambiguity may arise from context in which relevant language appears). In construing substantially similar lease language prohibiting a tenant from allowing any other person to occupy the leased premises, the Supreme Judicial Court concluded that a lodger taken in by the tenant to occupy one of the rooms, for a fee, did not "occupy" the premises in violation of the covenant, and such an arrangement was "not a leasing or underletting of the premises." *Peaks v. Cobb, 197 Mass. 554, 555, 83 N.E. 1106 (1908)*.<sup>13</sup> While there may very well be affordable housing goals served by restricting and requiring ap- [\*723] proval of anyone who occupies an affordable housing unit with an owner, the BRA must incorporate clearer language to do so. Compare Boston Housing Authority lease provision quoted in note 12, *supra*. Read as a whole, the condominium documents at issue are at least ambiguous with regard to whether Pham required the BRA's approval to share his unit with a roommate. See *Jefferson Ins. Co., supra*.

For all of the foregoing reasons, therefore, we agree with [\*\*\*21] the judge that in this regard, the clause is at least ambiguous and should not be construed against Pham.

c. *Attorney's fees.* We turn finally to the issue of attorney's fees. Pham was awarded \$92,720.95 on his initial application for attorney's fees and costs<sup>14</sup> and \$4,367.60 on his supplemental application for attorney's fees and costs. The judge denied Pham's second supplemental application for additional fees and costs of \$2,232.50, stating, "the Court believes that the prior fees and costs allowed represent reasonable compensation for all pre-appeal services." On appeal, Pham argues that the judge erred in denying his second supplemental application because the covenant entitles a prevailing party to all the attorney's fees he incurred.<sup>15</sup> We

<sup>13</sup> The lease covenant provided that the tenant could not "lease, nor underlet, nor permit any other person or persons to occupy ... [the premises]" without the approval of the lessor. *Peaks, 197 Mass. at 554-555*.

<sup>14</sup> Pham requested \$93,296.60 in his initial application for attorney's fees and costs. The judge removed all charges for "checking the docket" and a cost for meals, thereby reducing the award by \$575.65.

<sup>15</sup> In his brief, Pham also appeals the judge's reduction of his initial application for attorney's fees and costs. However, in his supplemental application for attorney's fees and costs, he noted, "Mr. Pham accepts the decision of the Court not [\*\*\*22] to award him legal fees for checking this Court's docket. ... "

disagree.

The covenant provides that “[i]f any action is brought to enforce this Covenant, the prevailing party shall be entitled to actual attorneys [sic] fees and other costs of bringing the action, in addition to any other relief or remedy to which such party may be entitled.” Relying on [Carter v. Warren Five Cents Sav. Bank](#), 409 Mass. 73, 564 N.E.2d 579 (1991), Pham argues that because the covenant provides for the [\*\*654] prevailing party to be awarded “actual” attorney’s fees, he was entitled to all legal charges incurred rather than the amount the judge deemed reasonable. We conclude that [Carter](#) is distinguishable and does not control the attorney’s fees request at issue here.

[Carter](#) involved a “golden parachute” provision in an executive compensation agreement. [Id.](#) at 76, 80. The agreement included a [\*\*724] bargained-for provision requiring the bank to pay “any legal expenses incurred” by the plaintiff in enforcing his rights under the agreement. [Id.](#) at 80. The Supreme Judicial Court interpreted this golden parachute provision to limit the bank’s challenge of attorney’s fees to either a claim that the charges “were not incurred in enforcing [the plaintiff’s] rights or ... that [\*\*\*23] the charges were above the highest level of a reasonable fee for those services.” [Ibid.](#)

As this court has previously explained, [Carter](#) represents “an exceptional situation.” [Citizens Bank of Mass. v. Travers](#), 69 Mass. App. Ct. 174, 176, 866 N.E.2d 974 (2007) ([Citizens Bank](#)). The provision in [Carter](#), requiring the bank to pay “any legal expenses incurred” by the plaintiff, was part of an executive compensation agreement. It was drafted by the bank for the benefit of the plaintiff and inserted to entice the plaintiff to remain employed with the bank “in the face of the uncertain consequences of a possible merger of the employer-bank into another entity.” [Id.](#) at 176, quoting from [Carter, supra](#) at 76. In contrast, in [Citizens Bank](#), the attorney’s fees provision requiring the borrower to pay “all” attorney’s fees and costs associated with collection was part of a bank note deemed to be “a contract of adhesion, drawn ... entirely in the bank’s favor.” [Citizens Bank, supra](#) at 177. The [Citizens Bank](#) court declined to apply [Carter](#) and instead considered it more appropriate to apply the “usual rule” limiting such a borrower’s obligation to an amount that is “fair and reasonable.” [Ibid.](#), quoting from [Trustees of Tufts College v. Ramsdell](#), 28 Mass. App. Ct. 584, 585, 554

This issue is therefore waived and we decline to address it.

[N.E.2d 34 \(1990\)](#) (interpreting note obligating student to repay “all attorneys’ fees” as limited to attorney’s fees “found to be fair [\*\*\*24] and reasonable”). Here, the attorney’s fees provision at issue is part of an affordable housing covenant, drafted by the BRA, in favor of the BRA and its program objectives, and we too consider it appropriate to limit an award of attorney’s fees to an amount that is fair and reasonable. See [Citizens Bank, supra](#) at 177. It is [Citizens Bank](#) and not [Carter](#) that governs the attorney’s fee request here. Therefore, the judge did not err in limiting Pham’s legal fees to “reasonable compensation for all pre-appeal services.” The order denying Pham’s second supplemental application for attorney’s fees and costs is affirmed.<sup>16</sup>

3. *Conclusion.* The judgment is affirmed. The order denying the [\*\*725] BRA’s motion to vacate judgment is affirmed. The order denying Pham’s second supplemental application [\*\*\*25] for attorney’s fees and costs is affirmed.

So ordered.

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End of Document

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<sup>16</sup> As the instant appeal was not frivolous, we decline Pham’s request that this court impose double costs on the BRA. Pham is, however, entitled to his appellate attorney’s fees and costs. He shall have fourteen days from the date of the rescript to submit to this court an application for appellate attorney’s fees and costs, together with supporting documentation. See [Fabre v. Walton](#), 441 Mass. 9, 10-11, 802 N.E.2d 1030 (2004). The BRA shall have fourteen days thereafter to respond.

# Attachment C

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title II</b>	EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
<b>Chapter 6</b>	THE GOVERNOR, LIEUTENANT GOVERNOR AND COUNCIL, CERTAIN OFFICERS UNDER THE GOVERNOR AND COUNCIL, AND STATE LIBRARY
<b>Section 178F</b>	ANNUAL VERIFICATION OF REGISTRATION DATA; HOMELESS SEX OFFENDERS; JUVENILES; DISCLOSURE OF INFORMATION

Section 178F. Except as provided in section 178F1/2 for a sex offender finally classified by the board as a level 2 or a level 3 sex offender, a sex offender required to register pursuant to sections 178C to 178P, inclusive, shall annually verify that the registration data on file with the board remains true and accurate by mailing to the board on a form approved by the board and signed under the pains and penalties of perjury, the sex offender's name, date of birth, home address or intended home address, any secondary addresses or intended secondary addresses, work address or intended work address and, if the sex offender is or intends to become a part-time or full-time employee of an institution of higher learning, the name and address of said institution and, if the sex offender is a part-time or full-time student at an institution of higher learning or intends to become a part-time or full-time student of an institution of higher learning, the name and address of said institution of higher learning. A



homeless sex offender shall verify registration data every 30 days with the board by mailing to the board on a form approved by the board and signed under the pains and penalties of perjury the sex offender's name, date of birth, primary address, any secondary addresses and work address. A homeless shelter receiving state funding shall cooperate in providing information in the possession of or known to such shelter, when a request for information is made to such shelter by the board; provided, however, that such request for information shall be limited to that which is necessary to verify an offender's registration data or a sex offender's whereabouts. A shelter that violates the provisions of this paragraph shall be punished by a fine of \$100 a day for each day that such shelter continues to violate the provisions of this paragraph. In addition, in each subsequent year during the month of birth of any sex offender required to register, the board shall mail a nonforwardable verification form to the last reported address of such sex offender. If such sex offender is a juvenile at the time of such notification, notification shall also be mailed to such sex offender's legal guardian or the agency having custody of the juvenile in the absence of a legal guardian and his most recent attorney of record. Such sex offender shall, within five days of receipt, sign the verification form under the penalties of perjury and mail it back to the board. The board shall periodically, and at least annually, send written notice to a city or town police department regarding any sex offender required to register whose last known address was in such city or town or who gave notice of his intent to move to or is otherwise believed to live or work or attend an institution of higher learning in such city or town, but who has failed to register or verify registration information as required.

The board shall examine through electronic transfer of information the tax returns, wage reports, child support enforcement records, papers or other documents on file with the commissioner of revenue or any other entity within the executive branch when there is reason to believe a sex offender required to register has not so registered in accordance with this chapter or where the address of such sex offender cannot be verified through other means; provided, however, that nothing herein shall be construed to authorize the disclosure, directly or indirectly, of any information other than the address of such sex offender.

# Attachment D



Positive

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## Commonwealth v. Bolling

Appeals Court of Massachusetts

May 5, 2008, Argued; September 12, 2008, Decided

No. 07-P-1185.

### Reporter

72 Mass. App. Ct. 618 \*; 893 N.E.2d 371 \*\*; 2008 Mass. App. LEXIS 932 \*\*\*

COMMONWEALTH vs. CLAUDE BOLLING.

**Prior History:** [\*\*\*1] Franklin. Complaint received and sworn to in the Greenfield Division of the District Court Department on August 15, 2006. The case was heard by William B. McDonough, J.

### Core Terms

sex offender, offender's, apartment, register, home address, secondary, homeless, nights, permanence, registration, lives, police department, resides, space, sex, registration form

### Case Summary

#### Procedural Posture

Defendant appealed his conviction by the the Greenfield Division of the District Court Department (Massachusetts) for violating the Sex Offender Registration and Community Notification Act, Mass. Gen. Laws ch. 6, §§ 178C-178P, specifically, for failing to provide notice of a change of address under [Mass. Gen. Laws ch. 6, § 178H\(a\)\(iii\)](#). Defendant contended that the evidence at his jury-waived trial was insufficient to support his conviction.

#### Overview

Defendant registered as a level 3 sex offender. A detective assisted him in filling out the registration form. For the space designated "Permanent Address," defendant specified "Streets of Greenfield, Franklin County, MA 01301." Defendant was subsequently arrested for living at an address different than what he put on the form. The appellate court held that in regard to Mass. Gen. Laws ch. 6, §§ 178C-178O, an offender's "home address" denoted some greater degree of permanence, and a greater frequency of residence, than

the transitory level of occupancy at a location for four or fewer nights in a month. The term "home address" in [Mass. Gen. Laws ch. 6, § 178E\(l\)](#) referred to an offender's primary place of residence. The evidence was not sufficient to establish that defendant had changed his home address, or primary residence as it established at most that he spent three nonconsecutive nights in July at an apartment and perhaps an unspecified number of other nights on unspecified dates at the apartment of another person. Since secondary addresses encompassed four or more nights in any month or 14 or more nights in any calendar year, the evidence failed to establish a violation.

#### Outcome

The judgment of the trial court was reversed.

### LexisNexis® Headnotes

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

#### [HNI](#) **Postconviction Proceedings, Sex Offenders**

Convicted sex offenders must register with the Sex Offender Registry Board, which then determines the classification level of the offender. [Mass. Gen. Laws ch. 6, §§ 178E, 178K\(2\)](#). The classification level in turn determines certain details of the offender's registration obligations. Level 3 sex offenders must verify their registration information annually in person at the local police department in the city or town in which they live. Mass. Gen. Laws ch. 6, § 178F1/2. In addition, the board annually mails a nonforwardable verification form to the last reported address of the offender, and the offender is required within five days after receipt of the verification form to sign it and register in person at the police department in the municipality in which the

offender lives. Pursuant to [Mass. Gen. Laws ch. 6, § 178E\(h\)](#), a sex offender who intends to move to a different city or town within the Commonwealth must register his intended new address with the board by mailing to it a form, at least ten days before establishing the new residence. Included among the information offenders must provide is their home address and any secondary addresses or intended secondary addresses. [Mass. Gen. Laws ch. 6, § 178E\(l\)](#).

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

### [HN2](#) **Postconviction Proceedings, Sex Offenders**

"Secondary addresses" are defined as the addresses of all places where a sex offender lives, abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not a sex offender's primary address; or a place where a sex offender routinely lives, abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not a sex offender's permanent address, including any out-of-state address. [Mass. Gen. Laws ch. 6, § 178C](#). [Mass. Gen. Laws ch. 6, § 178H](#) specifies the punishment to be imposed on a sex offender who knowingly fails to register, fails to verify registration information, fails to provide notice of a change of address, or provides false information. The statute specifies that level two or three sex offenders who reside at a homeless shelter must register every ninety days but imposes no comparable requirement on homeless sex offenders not living in a shelter; however, that fact does not nullify the obligation of homeless sex offenders not living in a shelter to register. [Mass. Gen. Laws ch. 6, § 178F 1/2](#).

Criminal Law & Procedure > General Overview

Governments > Legislation > Interpretation

### [HN3](#) **Criminal Law & Procedure**

As a general matter, a statute is to be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its

framers may be effectuated. Criminal statutes are construed narrowly; the courts must resolve in favor of criminal defendants any reasonable doubt as to a statute's meaning.

Governments > Legislation > Interpretation

### [HN4](#) **Legislation, Interpretation**

Where a statute does not define a term, the courts may interpret it in accordance with its generally accepted plain meaning.

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

### [HN5](#) **Postconviction Proceedings, Sex Offenders**

In regard to sexual offenders, "home" is defined as one's principal place of residence. The same text defines "residence" as the act or fact of dwelling in a place for some time or the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn.

Governments > Legislation > Interpretation

### [HN6](#) **Legislation, Interpretation**

In construing a term, the court looks to other provisions of the same statute for guidance.

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

### [HN7](#) **Postconviction Proceedings, Sex Offenders**

In regard to Mass. Gen. Laws ch. 6, §§ 178C-178O, within the statutory scheme, an offender's "home address" denotes some greater degree of permanence, and a greater frequency of residence, than the transitory (albeit "routine") level of occupancy at a location for four or fewer nights in a month.

Criminal Law & Procedure > Postconviction Proceedings > Sex Offenders > General Overview

**HN8**  **Postconviction Proceedings, Sex Offenders**

The term "home address" in [Mass. Gen. Laws ch. 6, § 178E\(l\)](#) refers to an offender's primary place of residence.

Criminal Law & Procedure > Trials > Motions for Acquittal

Evidence > Weight & Sufficiency

**HN9**  **Trials, Motions for Acquittal**

[Mass.R.Crim.P. 25\(a\)](#) provides that a judge shall enter a finding of not guilty on his own motion wherever the evidence is insufficient as a matter of law. Further, insufficient evidence presents a situation which is inherently serious enough to create a substantial risk of a miscarriage of justice.

Governments > Legislation > Effect & Operation > General Overview

**HN10**  **Legislation, Effect & Operation**

It is not the court's proper role or function to rewrite a statute to address what may appear to be gaps in its scope or practical operation.

**Headnotes/Summary****Headnotes**

*Sex Offender. Sex Offender Registration and Community Notification Act.*

**Counsel:** Michael J. Fellows, for the defendant.

Cynthia M. Pepyne, Assistant District Attorney, for the Commonwealth.

**Judges:** Present: Gelinias, Cohen, & Green, JJ.

**Opinion by:** GREEN

**Opinion**

**[\*618]** **[\*\*372]** GREEN, J. We are called upon to

consider again the application of the Sex Offender Registration and Community Notification Act, [G. L. c. 6, §§ 178C-178P](#), to homeless sex offenders. See *Commonwealth v. Rosado*, 450 Mass. 657, 881 N.E.2d 112 (2008); *Commonwealth v. Scipione*, 69 Mass. App. Ct. 906, 870 N.E.2d 108 (2007). The defendant, who registered with the Greenfield police department as a level three sex offender (listing his address as the "streets of Greenfield"), was arrested by police in the neighboring town of Montague after they received information that he had begun **[\*619]** spending nights in the apartment of a resident of that town. On appeal, the defendant contends that the evidence at his jury-waived trial was insufficient to support his conviction. We agree and reverse the judgment.

**[\*\*373]** *Facts and procedural background.* Viewed in a light most favorable to the Commonwealth, see [Commonwealth v. Latimore](#), 378 Mass. 671, 676-677, 393 N.E.2d 370 (1979), **[\*\*\*2]** the evidence at trial established the following facts. On June 6, 2006, the defendant came to the Greenfield police department to register as a level three sex offender.<sup>2</sup> Detective Laura Gordon assisted the defendant in filling out the registration form, by obtaining information from the defendant and filling in the blanks on the form. For the space designated "Permanent Address," the defendant specified "Streets of Greenfield, Franklin County, MA 01301." For the space designated "Mailing Address," the defendant specified "178 Avenue A -- P.O. Box 84, Montague, Franklin County, MA 01376."<sup>3</sup> The space provided for "Temporary OR Out of State Address (If different than permanent)" was not completed; Detective Gordon drew a line through the space.

After completing the form, Detective Gordon read to the defendant the following notification, which appeared at the bottom of the registration form:

"You are advised that you must notify, in writing, the Sex Offender **[\*\*\*3]** Registry Board or the Police Department in the city or town in which you reside not less than 10 days prior to any change in residence, employment, or attendance at an institute of higher learning. You are further advised that you are required to immediately contact and advise of your presence, the appropriate authorities in any other state in which you

<sup>2</sup> The record does not describe the offense or offenses that led to the defendant's classification.

<sup>3</sup> In the space for "Mailing Address," the registration form stated that the mailing address "MUST accompany a permanent or temporary address."

locate yourself for the purpose of residence, employment, or attendance at an institute of higher learning. Failing to do so may subject you to criminal prosecution."

After Detective Gordon read the advisory to the defendant, [\*620] the defendant checked the box stating that "the [above] requirements were read to me and I understand these requirements," and signed the completed form. Above his signature, the form contained an attestation, under the pains and penalties of perjury, that the information provided by the defendant was true and accurate. After the defendant signed the registration form, Detective Gordon gave the defendant a second form, which contained various information about the defendant's ongoing obligations. Among other things, the form stated that "[w]e expect you to comply with the state law ([M.G.L. c. 6 Sec. 178C through P](#) [\*\*\*4] ) which requires you to notify us of any change of residence address, both full and part-time residences, a minimum of ten (10) days prior to the change." The defendant signed this form as well, under a statement certifying "that I have read or had read to me, the above information and that I fully understand my duties and responsibilities with regard to registering as a sex offender."

Near the end of July, 2006, the defendant met Lori Martinez. Martinez lived in a two-bedroom, second-floor apartment in the Turners Falls section of Montague.<sup>4</sup> Montague is adjacent to Greenfield, and Martinez's apartment is approximately two or three miles from the Greenfield courthouse. On the day they met, the defendant asked Martinez if he could spend the night in her apartment, as he had no place to stay. Martinez agreed, and the defendant [\*\*374] slept on her sofa.<sup>5</sup> The defendant stayed in Martinez's apartment twice more during July, but never more than one night in a row. The defendant did not pay Martinez for his stays or contribute to her household expenses.

On August 3, 2006, Martinez's mother died, and Martinez left her apartment to make funeral arrangements. Martinez locked her apartment upon her departure and did not notice anything different in her apartment when she returned several days later, following her mother's funeral. When Martinez returned

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<sup>4</sup> Martinez testified that she had converted a living room into a third bedroom.

<sup>5</sup> Martinez testified that she had no romantic relationship with the [\*\*\*5] defendant and understood that he had a girlfriend.

to her apartment, the defendant came to visit her from time to time. Asked whether the defendant stayed overnight in her apartment in August, Martinez could not recall. Martinez was allowed to [\*621] testify, over the defendant's objection, that she was "aware" that the defendant stayed at a neighbor's house on occasion, though the record does not indicate the source of her knowledge, the identity or address of the neighbor (other than that it was not in the same apartment building), the number of occasions the defendant stayed at the neighbor's, or the dates.<sup>6</sup>

Staff Sergeant Christopher Williams of the Montague police department began an investigation of the defendant after receiving information that the defendant "was living on Fourth Street in Turners Falls."<sup>7</sup> On August 14, 2006, Williams knocked on the door to Martinez's apartment and asked for the defendant. Martinez went to a bedroom door, knocked, and told the defendant that someone was there to see him. Williams heard the bedroom door being unlocked, and then observed the defendant emerge from the bedroom, holding a cup of beer. Williams arrested the defendant. After a jury-waived trial in the District Court, the [\*\*\*7] defendant was convicted on a charge of failing to provide notice of a change of address, as required under [G. L. c. 6, § 178H\(a\)\(iii\)](#), and sentenced to one year in the house of correction.

*Discussion.* "The Legislature adopted [G. L. c. 6, §§ 178C-178O](#), an extensive statutory registration scheme for sex offenders, in order to protect the public from 'the danger of recidivism posed by sex offenders' and to aid law enforcement officials in protecting their communities

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<sup>6</sup> Martinez's testimony concerning the neighbor occurred during two exchanges with the prosecutor. During the first exchange, after asking whether the defendant asked to stay in Martinez's apartment at any other time after the first night and eliciting that he had done so "a couple other [\*\*\*6] times," the prosecutor asked, "Did you have information that he stayed at anyone else's house?" and (after Martinez's affirmative response) "What information did you have?" Martinez responded to the latter inquiry that "I just know that he stayed at the neighbor's occasionally." Later, during Martinez's testimony about her return to her apartment after her mother's funeral, the prosecutor asked, "And at this time did you have information or were you aware that he was staying at other people's homes?" Martinez responded, "Just the neighbor's. Other than that I don't know."

<sup>7</sup> Upon the defendant's objection, Williams's testimony that he had "received information" was admitted for background purposes only, and not for its truth.

by providing them with information" (footnote omitted). *Commonwealth v. Rosado*, 450 Mass. at 659-660, quoting from St. 1999, c. 74, § 1. [HN1](#)<sup>↑</sup> Convicted sex [\*622] offenders must register with the Sex Offender Registry Board (board), which then determines the classification level of the offender. [G. L. c. 6, §§ 178E, 178K\(2\)](#). The classification level in turn determines certain details of the offender's registration obligations. Level three sex offenders, such as the defendant, must verify [\*\*375] their registration information annually in person at the local police department in the city or town [\*\*\*8] in which they live.<sup>8</sup> [G. L. c. 6, § 178F1/2](#). In addition, the board annually mails a nonforwardable verification form to the last reported address of the offender, and the offender is required within five days after receipt of the verification form to sign it and register in person at the police department in the municipality in which the offender lives. *Ibid.* Pursuant to [G. L. c. 6, § 178E\(h\)](#), a sex offender who intends to move to a different city or town within the Commonwealth must register his intended new address with the board by mailing to it a form, at least ten days before establishing the new residence. Included among the information offenders must provide is their home address and any secondary addresses or intended secondary addresses. See [G. L. c. 6, § 178E\(l\)](#). [HN2](#)<sup>↑</sup> "Secondary addresses" are defined as "the addresses of all places where a sex offender lives, abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not a sex offender's primary address; or a place where a sex offender routinely lives, abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not a [\*\*\*9] sex offender's permanent address, including any out-of-state address." [G. L. c. 6, § 178C](#).<sup>9</sup> [Section 178H](#) specifies the punishment to be imposed on a sex offender who knowingly fails to register, fails to verify registration information, fails to provide notice of a change of address, or provides false information. The statute specifies that level two or three sex offenders who reside at a [\*623] homeless shelter must register

<sup>8</sup> Level two offenders are subject to the same requirement.

<sup>9</sup> The definition of "secondary addresses," and the requirement to include secondary addresses as part of the information furnished by a sex offender upon registration, was added by amendment effective July 1, 2006. See St. 2006, c. 139, §§ 5, 9-20. The [\*\*\*10] obligation to notify the board of changes in secondary addresses accordingly was in effect at the time of the events giving rise to the charge against the defendant.

every ninety days<sup>10</sup> but imposes no comparable requirement on homeless sex offenders not living in a shelter; however, that fact does not nullify the obligation of homeless sex offenders not living in a shelter to register. See [G. L. c. 6, § 178F1/2](#); *Commonwealth v. Scipione*, 69 Mass. App. Ct. 906, 907, 870 N.E.2d 108 (2007).

[HN3](#)<sup>↑</sup> As a general matter, "a statute is to be interpreted 'according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.'" *Commonwealth v. Welch*, 444 Mass. 80, 85, 825 N.E.2d 1005 (2005), quoting from *Commonwealth v. Galvin*, 388 Mass. 326, 328, 446 N.E.2d 391 (1983). Criminal statutes are construed narrowly; "[w]e must resolve in favor of criminal defendants any reasonable doubt as to [a] statute's meaning." *Commonwealth v. Pagan*, 445 Mass. 161, 167, 834 N.E.2d 240 (2005), quoting from *Commonwealth v. Kerr*, 409 Mass. 284, 286, 565 N.E.2d 1201 (1991).

The statute does not define the term "home address." [HN4](#)<sup>↑</sup> "[W]here a statute does not define a term, we may interpret it 'in accordance with its generally [\*\*\*11] accepted plain meaning.'" [\*\*376] *Commonwealth v. Becker*, 71 Mass. App. Ct. 81, 87, 879 N.E.2d 691 (2008), petition for cert. filed (U.S. Aug. 14, 2008) (No. 08-5893), quoting from *Commonwealth v. Boucher*, 438 Mass. 274, 276, 780 N.E.2d 47 (2002). [HN5](#)<sup>↑</sup> "Home" is defined as "one's principal place of residence." Webster's Third New Intl. Dictionary 1082 (2002). The same text defines "residence" as "the act or fact of . . . dwelling in a place for some time" or "the place where one actually lives . . . as distinguished from one's . . . domicile [or] a place of temporary sojourn." *Id.* at 1931. See Black's Law Dictionary 750, 546 (8th ed. 2004) (defining "home" as "[a] dwelling place" and "dwelling house" as "[t]he house or other structure in which a person lives; a residence or abode").

[HN6](#)<sup>↑</sup> In construing the term, we also look to other provisions of the same statute for guidance. See *Locator Servs. Group, Ltd. v. Treasurer & Receiver*

<sup>10</sup> We note that by St. 2006, c. 303, § 3, effective December 20, 2006, the requirement has been changed to every forty-five days.



*Gen.*, 443 *Mass.* 837, 859, 825 *N.E.2d* 78 (2005), quoting [\*624] from *Kargman v. Commissioner of Rev.*, 389 *Mass.* 784, 788, 452 *N.E.2d* 492 (1983) ("statutes should be interpreted as a whole to constitute a consistent and harmonious provision"). In particular, we consider the meaning of the undefined term "home address" with some reference to the [\*\*\*12] definition of "secondary addresses" provided in the statute. As observed above, "secondary addresses" are those in which a sex offender "routinely lives, abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not a sex offender's permanent address." From that definition, it is apparent that, *HN7* [↑] within the statutory scheme, an offender's "home address" denotes some greater degree of permanence, and a greater frequency of residence, than the transitory (albeit "routine") level of occupancy at a location for four or fewer nights in a month.<sup>11</sup>

That the term implies some degree of permanence is also indicated by the designation of the space furnished on the registration form for an offender's primary address: the applicable space on the form reads "Permanent Address." The form, generated by the board, of course cannot amend the statute. However, the manner in which the form requests information about the offender's home address illuminates to some extent the interpretation of the statute by [\*\*\*13] the administrative agency charged with its enforcement. See *Wilson v. Commissioner of Transitional Assistance*, 441 *Mass.* 846, 851, 809 *N.E.2d* 524 (2004).<sup>12</sup>

<sup>11</sup>As noted above, "secondary addresses" also include addresses at which an offender resides for fourteen or more days during any calendar year.

<sup>12</sup>In any event, the request on the registration form for "Permanent Address" goes to the question of the defendant's intent, or knowing violation of his registration obligations under the statute. Having been asked to furnish his home address as his "permanent address," a registered sex offender would understand his obligation to notify the board of changes in his home address to attach only to nontransitory changes -- at least as related to his "home address." We note in passing that the terminology employed on the form, or in the accompanying notification given to the defendant at the time he registered, does not mirror the terminology of the statute; while the statute refers to "home address," "residence," and "secondary addresses," the registration form requests information concerning the offender's "permanent address," "temporary address," and "mailing address," while the accompanying notification sheet refers to the offender's obligation to notify the board of any "change of residence

We conclude that *HN8* [↑] the term "home address" in [\*\*\*14] the statute [\*625] refers to an offender's primary place of residence.<sup>13</sup> [\*\*\*377] To the extent that the Commonwealth suggests that an offender's "home address" is wherever the offender sleeps on any particular night, even if on a wholly transitory basis, the suggestion is incompatible with the common usage of the term, the greater frequency assigned under the statute to the lesser category of "secondary addresses," and the implication of some degree of permanence set forth in the form promulgated by the board.<sup>14</sup> As applied to the facts of the present case, it is plain that the evidence at trial was not sufficient to establish that the defendant had changed his home address (or primary residence) from Greenfield to Turners Falls.<sup>15</sup>

Our inquiry does not end with the conclusion that the evidence did not establish that the defendant changed his home address to Turners Falls. As the Commonwealth observes, a violation of the statutory obligation to register can also arise from a defendant's failure to report any secondary addresses, or changes thereto. Here, the term is clearly defined by the statute, and our examination accordingly may compare that definition to the evidence adduced at trial. As summarized above, the evidence established at most that the defendant spent three nonconsecutive nights in July, 2006, at Martinez's apartment in Turners Falls, and (perhaps) an unspecified number of other nights on unspecified dates at the apartment [\*\*\*16] of another

address."

<sup>13</sup>That is not, however, to erode the distinction between a residence and a domicile. See *Commonwealth v. Becker*, 71 *Mass. App. Ct.* at 92-93.

<sup>14</sup>Moreover, such a construction would be incapable of sensible administration, in light of an offender's obligation to notify the board at least ten days prior to any change of address. See *Commonwealth v. Rosado*, 450 *Mass.* at 662-663.

<sup>15</sup>Though the defendant did not move for a required finding of not guilty at the close of the Commonwealth's [\*\*\*15] evidence, *HN9* [↑] "*Mass.R.Crim.P.* 25(a), 378 *Mass.* 896, 93 *N.E.2d* 313 (1979), provides that a judge 'shall enter a finding of not guilty' on his own motion wherever 'the evidence is insufficient as a matter of law.'" *Commonwealth v. Gonzales*, 33 *Mass. App. Ct.* 728, 729, 604 *N.E.2d* 1317 (1992). "Further, insufficient evidence presents a situation which is 'inherently serious enough to create a substantial risk of a miscarriage of justice.'" *Ibid.*, quoting from *Commonwealth v. McGovern*, 397 *Mass.* 863, 867-868, 494 *N.E.2d* 1298 (1986).

(unidentified) person in that town.<sup>16</sup> Since the statute defines secondary addresses to encompass four or more nights (consecutive or nonconsecutive) [\*626] in any month (or fourteen or more nights in any calendar year), the evidence at trial failed to establish a violation of the registration obligation with respect to secondary addresses as well.<sup>17</sup>

We recognize that the circumstances of homeless sex offenders pose particular difficulties for the administration of the sex offender registration statute. In the present case, the registration form completed by the defendant at least placed officials in [\*\*378] Montague on notice of the defendant's regular presence in that community, by listing a Montague address as the defendant's mailing address. Nonetheless, the inherently transitory nature of homelessness makes it difficult to apply to homeless sex offenders the same considerations of residence applied to offenders who are not homeless. The difficulties of fitting homeless persons into the statutory scheme are not newly discovered. See *Commonwealth v. Rosado, supra*; *Commonwealth v. Scipione, supra*. However, [HN10](#)<sup>(↑)</sup> it is not our proper role or function to rewrite the statute to address what may appear to be gaps in its scope or practical [\*\*\*18] operation. See [Commonwealth v. Becker, 71 Mass. App. Ct. at 94-96](#) (Cohen, J., concurring).

The evidence was insufficient as matter of law to support the defendant's conviction. The judgment of conviction is accordingly reversed, the finding is set

aside, and the case is remanded for entry of a finding of not guilty.

*So ordered.*

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End of Document

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<sup>16</sup> Martinez's testimony that the defendant stayed occasionally at a neighbor's home should not have been admitted over the defendant's objection directed to the lack of foundation, at least not without inquiry into the basis of Martinez's knowledge. We are unable to ascertain from the record whether Martinez's "knowledge" rested on hearsay statements by an unidentified third party, on statements made to her by the defendant himself, or on her own percipient observations. In any event, the testimony was entirely lacking in any detail concerning the number of occasions on which the defendant stayed at the neighbor's, or when such stays occurred. Significantly, there is no indication in the testimony that any of such occasions occurred in July; the only testimony about the time frame in which the defendant stayed with Martinez's neighbor [\*\*\*17] referred to the period following the funeral of Martinez's mother in early August. See note 6, *supra*.

<sup>17</sup> Because the evidence does not establish that the defendant spent four nights in Turners Falls in any month, we need not consider what the term "routinely" adds to the statutory definition of "secondary addresses."

# Attachment E



**The Commonwealth of Massachusetts**  
**William Francis Galvin**

Minimum Fee: \$250.00

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

**Articles of Organization**

(General Laws, Chapter 156D, Section 2.02; 950 CMR 113.16)

Identification Number: 001360999

**ARTICLE I**

The exact name of the corporation is:

250 LONG POND, INC.

**ARTICLE II**

Unless the articles of organization otherwise provide, all corporations formed pursuant to G.L. C156D have the purpose of engaging in any lawful business. Please specify if you want a more limited purpose:

REAL ESTATE OWNERSHIP & DEVELOPMENT AND ALL OTHER LAWFUL PURPOSES.

**ARTICLE III**

State the total number of shares and par value, if any, of each class of stock that the corporation is authorized to issue. All corporations must authorize stock. If only one class or series is authorized, it is not necessary to specify any particular designation.

Class of Stock	Par Value Per Share Enter 0 if no Par	Total Authorized by Articles of Organization or Amendments		Total Issued and Outstanding Num of Shares
		Num of Shares	Total Par Value	
CNP	\$0.00000	1,000	\$0.00	1,000

G.L. C156D eliminates the concept of par value, however a corporation may specify par value in Article III. See G.L. C156D Section 6.21 and the comments thereto.

**ARTICLE IV**

If more than one class of stock is authorized, state a distinguishing designation for each class. Prior to the issuance of any shares of a class, if shares of another class are outstanding, the Business Entity must provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of that class and of each other class of which shares are outstanding and of each series then established within any class.

**ARTICLE V**

The restrictions, if any, imposed by the Articles of Organization upon the transfer of shares of stock of any class are:

**ARTICLE VI**  
 Page 28 of 83

Other lawful provisions, and if there are no provisions, this article may be left blank.

**Note: The preceding six (6) articles are considered to be permanent and may be changed only by filing appropriate articles of amendment.**

**ARTICLE VII**

The effective date of organization and time the articles were received for filing if the articles are not rejected within the time prescribed by law. If a *later* effective date is desired, specify such date, which may not be later than the *90th day* after the articles are received for filing.

**Later Effective Date: Time:**

**ARTICLE VIII**

The information contained in Article VIII is not a permanent part of the Articles of Organization.

**a,b. The street address of the initial registered office of the corporation in the commonwealth and the name of the initial registered agent at the registered office:**

Name: DENNIS J DOWNING, ESQ.  
 No. and Street: 17 MAHAIWE STREET  
SUITE 1  
 City or Town: GREAT BARRINGTON State: MA Zip: 01230 Country: USA

**c. The names and street addresses of the individuals who will serve as the initial directors, president, treasurer and secretary of the corporation (an address need not be specified if the business address of the officer or director is the same as the principal office location):**

<b>Title</b>	<b>Individual Name</b> <small>First, Middle, Last, Suffix</small>	<b>Address</b> (no PO Box) <small>Address, City or Town, State, Zip Code</small>
<b>PRESIDENT</b>	<b>KENNETH D ALPART</b>	<b>250 LONG POND ROAD</b> <b>GREAT BARRINGTON, MA 01230 USA</b>
<b>TREASURER</b>	<b>KENNETH D ALPART</b>	<b>250 LONG POND ROAD</b> <b>GREAT BARRINGTON, MA 01230 USA</b>
<b>SECRETARY</b>	<b>KENNETH D ALPART</b>	<b>250 LONG POND ROAD</b> <b>GREAT BARRINGTON, MA 01230 USA</b>
<b>DIRECTOR</b>	<b>KENNETH D ALPART</b>	<b>250 LONG POND ROAD</b> <b>GREAT BARRINGTON, MA 01230 USA</b>

**d. The fiscal year end (i.e., tax year) of the corporation:**  
 January

**e. A brief description of the type of business in which the corporation intends to engage:**

**REAL ESTATE OWNERSHIP & DEVELOPMENT**

**f. The street address (post office boxes are not acceptable) of the principal office of the corporation:**

No. and Street: **250 LONG POND ROAD**  
 City or Town: **GREAT BARRINGTON** State: **MA** Zip: **01230** Country: **USA**

**g. Street address where the records of the corporation required to be kept in the Commonwealth are located (post office boxes are not acceptable):**

No. and Street: **250 LONG POND ROAD**

City or Town: **GREAT BARRINGTON**

State: **MA**

Zip: **01230**

Country: **USA**

which is

its principal office

an office of its transfer agent

an office of its secretary/assistant secretary

its registered office

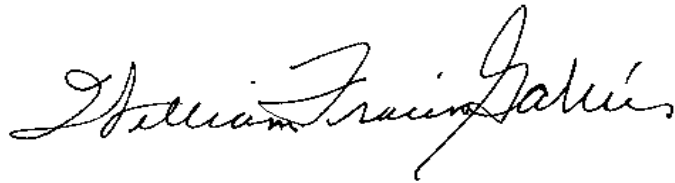
**Signed this 28 Day of December, 2018 at 12:51:04 PM by the incorporator(s).** *(If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)*

**KENNETH D. ALPART**

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

December 28, 2018 12:48 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive style with a large, prominent initial "W".

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*

# Attachment F





**The Commonwealth of Massachusetts**  
**William Francis Galvin**

No Fee

Secretary of the Commonwealth, Corporations Division  
 One Ashburton Place, 17th floor  
 Boston, MA 02108-1512  
 Telephone: (617) 727-9640

**Statement of Change of Supplemental Information**

(General Laws, Chapter 156D, Section 2.02 AND Section 8.45; 950 CMR 113.17)

1. Exact name of the corporation: 250 LONG POND, INC.

2. Current registered office address:

Name: DENNIS J DOWNING, ESQ.

No. and Street: 17 MAHAIWE STREET

SUITE 1

City or Town: GREAT BARRINGTON

State: MA

Zip: 01230

Country: USA

3. The following supplemental information has changed:

Names and street addresses of the directors, president, treasurer, secretary

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
PRESIDENT	KENNETH D ALPART	15 DAISY PLACE TENAFLY, NJ 07670 USA
TREASURER	KENNETH D ALPART	15 DAISY PLACE TENAFLY, NJ 07670 USA
SECRETARY	KENNETH D ALPART	15 DAISY PLACE TENAFLY, NJ 07670 USA
DIRECTOR	KENNETH D ALPART	15 DAISY PLACE TENAFLY, NJ 07670 USA

Fiscal year end:

December

Type of business in which the corporation intends to engage:

**REAL ESTATE OWNERSHIP & DEVELOPMENT**

Principal office address:

No. and Street: 38 MAHAIWE STREET

SUITE 1

City or Town: GREAT BARRINGTON

State: MA

Zip: 01230

Country: USA

g. Street address where the records of the corporation required to be kept in the Commonwealth are located (post office boxes are not acceptable):

No. and Street: 38 MAHAIWE STREET

SUITE 1

City or Town: GREAT BARRINGTON

State: MA

Zip: 01230

Country: USA

**which is**

- its principal office
- an office of its secretary/assistant secretary
- an office of its transfer agent
- its registered office

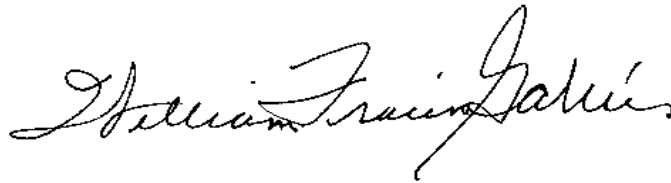
**Signed by KENNETH D. ALPART, its PRESIDENT  
on this 4 Day of June, 2021**

© 2001 - 2021 Commonwealth of Massachusetts  
All Rights Reserved

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

June 04, 2021 11:47 AM

A handwritten signature in cursive script that reads "William Francis Galvin". The signature is written in black ink and is centered on the page.

WILLIAM FRANCIS GALVIN

*Secretary of the Commonwealth*

# Attachment G

Matthew Kollmer  
Assistant Building Inspector

E-mail: mkollmer@townofgb.org



Town Hall, 334 Main Street  
Great Barrington, MA 01230

Telephone: (413) 528-3206  
Fax: (413) 528-3064

### TOWN OF GREAT BARRINGTON MASSACHUSETTS

#### OFFICE OF THE INSPECTOR OF BUILDINGS

6/10/20

Mr. Kenneth Alpert  
121 St James Place  
Brooklyn, NY 11238-1802  
CERTIFIED MAIL # 70183090000093562951

#### Re: 250 Long Pond Rd : Notice of violation of Great Barrington Zoning ByLaw

Notice to Mr. Kenneth Alpert;

This office received a complaint that the above property is used as a wedding and/or retreat venue resulting in excessive noise. It was found listed on weddingwire.com

Violation: The R-2 Zone this property is located in does not allow for the above use unless a special permit is granted by the Board of Selectmen as per Great Barrington Bylaw §7.16.

Remedy: Cease the use of the property as a wedding/event venue without acquiring a Special Permit from the Board of Selectmen if the property is at least 10 years of age.

Appeal: You have the right to appeal this decision within 30 days as per § 10.2 of the Great Barrington Zoning ByLaws.

Non-compliance with this order can result in future fines as per § 10.1.7  
Please contact this office with any inquiries.

Respectfully

Matthew Kollmer  
Assistant Building Inspector

<b>U.S. Postal Service™</b>	
<b>CERTIFIED MAIL® RECEIPT</b>	
Domestic Mail Only	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ®.	
<b>OFFICIAL USE</b>	
Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$
<input type="checkbox"/> Return Receipt (electronic)	\$
<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input checked="" type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	
\$	
Total Postage and Fees	
\$	
Sent To	
Kenneth Alpert	
Street and Apt. No. or PO Box No.	
121 St. James Place	
City, State, ZIP+4®	
Brooklyn, NY 11238-1802	
PS Form 3800, April 2015 PSN 7530-02-000-9047	
See Reverse for Instructions	

7018 3090 0000 9356 2951

Postmark Here: JUN 17 2021 0123 Bldg

# Attachment H

BK 1224 PG 88  
02/16/01 12:24 DOC. 150619

CONSERVATION RESTRICTION

From

KELTON M. BURBANK, Trustee, AMERICAN CHESTNUT NOMINEE TRUST

To

BERKSHIRE NATURAL RESOURCES COUNCIL, Inc.

-----  
THIS GRANT DEED OF EASEMENT is made this 11<sup>th</sup> day of May, 2000 by Kelton M. Burbank, Trustee of AMERICAN CHESTNUT NOMINEE TRUST, established by Declaration of Trust dated July 6, 1990 and recorded in the Berkshire Southern District Registry of Deeds in Book 740, Page 94 ("Grantor"), in favor of the BERKSHIRE NATURAL RESOURCES COUNCIL, INC. ("Grantee"), GRANTEE being a Massachusetts charitable corporation with an address at 20 Bank Row, Pittsfield, Massachusetts 01201.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in the Town of Great Barrington, County of Berkshire, Commonwealth of Massachusetts, being those premises described in a deed to the Grantor dated June 8, 1998 and recorded in the Berkshire Southern District Registry of Deeds in Book 1071, Page 91, and being more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Berkshire County in general and the Town of Great Barrington in particular have in recent years come under increasing development pressure, and such development destroys or otherwise severely impacts the natural resources, scenic beauty, and open character of the area; and

WHEREAS, the Property possesses significant natural, scenic, and open space values (collectively, "conservation values") of great importance to the Grantor and the inhabitants of the Town of Great Barrington and Berkshire County; and

WHEREAS, the Property is a large natural area which contains a diversity of wildlife habitats and several environmentally sensitive land types, including interior forest and steep slopes; and

WHEREAS, the Property is located across Long Pond Road from the Pfeiffer Arboretum, so-called, land owned by the Great Barrington Land Conservancy, which manages the aforesaid land for conservation and recreational purposes, and preservation of the Property will contribute to the protection of the conservation interests represented by the aforesaid lands, including preservation of an east-west wildlife corridor extending from the Williams River to Long Pond; and

WHEREAS, the Property is located in the watershed of the Williams River, and includes approximately 900 feet of frontage along said river, and an additional 2,000 feet of boundary located within 100 feet of said river, and preservation of the Property will contribute to the protection of water resources along said river and within said river's watershed; and

WHEREAS, the Property includes approximately 1,630 feet of frontage on Long Pond Road, a public way, and preservation of the Property will contribute to the public's enjoyment of the rural character and scenic qualities of this public way; and

WHEREAS, the Property consists of open space the preservation of which is in furtherance of the conservation policies of the Conservation Commission of the Town of Great Barrington and the Berkshire County Regional Planning Commission; and

WHEREAS, the specific conservation values of the Property are documented in a letter on file at the offices of the Grantee and incorporated herein by this reference ("Baseline Documentation"), which consists of documentation that the parties agree provides, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, Grantor intends, as owner of the Property, to convey to the Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and



WHEREAS, Grantee is a charitable corporation formed to promote and protect the natural resources of Berkshire County to the end that said County shall be more livable and more attractive; to strive to eliminate pollution of streams and lakes, preserve open spaces for recreation and scenery, and discourage unsightly development in the interest of the County as a whole; to take an active interest in local and regional planning and zoning, pollution abatement programs, roadside beautification, the rural leisure home movement, and the conservation of selected fields and forests for recreational use, for livability, for protection, and for beauty; to work closely with the many groups concerned with allied issues and to coordinate and supplement the activities of such groups as they relate to the natural resources of Berkshire County;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the Commonwealth of Massachusetts and in particular Sections 31-33 of Chapter 184 of the General Laws, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns, with quitclaim covenants, a Conservation Restriction in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Conservation Restriction").

1. Purpose. It is the purpose of this Conservation Restriction to assure that the Property will be retained forever predominantly in its natural, scenic, and open space condition for conservation purposes and to prevent any use of the Property that will significantly impair or interfere with the conservation and scenic values of the Property and the Property's natural resources and associated ecosystems.

2. Rights of Grantee. To accomplish the purpose of this Conservation Restriction the following rights are conveyed to Grantee by this Conservation Restriction:

- (a) to prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Restriction and to require the restoration of such areas or features of the Property that may be damaged by an inconsistent activity or use; and

(b) to enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Conservation Restriction, provided that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

3. Prohibited Uses. Subject to the reserved rights set forth in paragraph 4 below,

neither the Grantor nor the heirs, devisees, successors, or assigns of the Grantor will perform or permit the following acts or uses on, over or under the Property:

- (a) constructing or placing of any building, mobile home, sign, billboard or other advertising display, or other temporary or permanent structure or facility on or above or below the Property;
- (b) using or occupying any temporary structure, trailer, vehicle, tent, shack or outbuilding as a residence, either permanently or temporarily, on the Property;
- (c) mining, excavating, dredging or removing from the Property of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
- (d) placing, filling, storing or dumping on the Property of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or the installation of underground storage tanks;
- (e) cutting, removing or otherwise destroying trees, grasses, or other vegetation;
- (f) parking or maintaining boats, camping trailers, motor homes or unregistered or non-operative motor vehicles on or above the Property;
- (g) subdividing the Property;
- (h) commercial recreational use of the Property;
- (i) any other use of the Property or activity which would destroy significant conservation interests unless such use or activity is necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

4. Reserved Rights. The provisions of paragraph 3 notwithstanding, the following rights, uses, and activities by the Grantor and his successors and assigns shall not be

**prohibited** by this Conservation Restriction and shall be deemed not inconsistent with the purpose of this Conservation Restriction:

- (a) the right to engage in all acts or uses not expressly prohibited herein;
- (b) the right to engage in commercial and non-commercial forest management** when consistent with the Performance Goals and specific restrictions and conditions described below:

(I) Performance Goals: It is the intent of this Conservation Restriction to maintain and enhance a healthy, diverse forest, characterized by the propagation and protection of certain mature or otherwise outstanding trees or stands of trees, prevention of soil erosion, preservation of water quality, wetlands and riparian zones, enhancement of wildlife habitat and protection of cultural features, while permitting limited commercial and non-commercial timber production in accordance with the goals enumerated herein and the prescriptions and restrictions described in this paragraph 4(b).

(II) Forest Management Plan: All commercial forest management activities, except preliminary timber cruising and resource evaluation, shall be conducted in accordance with a written plan, a copy of which shall be provided to the Grantee. The plan shall be prepared prior to any commercial harvesting or treatment activities, and shall require the written approval of Grantee. The plan, including any and all updates or amendments, shall be prepared by a forester approved by Grantee and the Grantor. Grantee's approval of the forester shall not be unreasonably withheld, but shall be granted only upon a finding by Grantee that the proposed forester has demonstrated a successful understanding of and commitment to silvicultural practices consistent with the performance goals enumerated in paragraph 4(b)(I). The plan shall be reviewed and updated by a forester and approved in writing by Grantee every twenty (20) years, unless there has been no commercial timber management during that twenty (20) year period, in which case update of the plan may be postponed until such time as a commercial timber management activity is proposed. In such a case, the plan must be updated and approved by Grantee prior to the commencement of the management activity.

The forest management plan shall specify activities and practices proposed to achieve compliance with the purposes of this Conservation Restriction and performance goals as described in paragraph 4(b). The plan shall include, at a minimum, the following:

- (A) goals and objectives of the Grantor, consistent with the terms of this Conservation Restriction;

in this paragraph with the prior written approval of Grantee. Said approval shall be at the sole discretion of Grantee, and shall only be granted upon a showing by Grantor that a harvest exceeding the aforesaid limitations advances the Performance Goals described in subparagraph 4(b)(I) and promotes forest values other than timber production.

Notwithstanding the provisions of this subparagraph 4(b), Grantor retains the right to pursue certain non-commercial and generally accepted forest management activities without preparation of a forest management plan, or written notice to or approval of the Grantee, including, but not limited to, the right to selectively cut or clear vegetation for habitat protection, fire protection, unpaved trail and road maintenance, tick control, disease control or otherwise to preserve the present condition of the Property, the right to clear brush and immature trees for the maintenance or restoration of pastureland, and the right to harvest trees for Grantor's personal, non-commercial use on the Property, provided, however, that said harvest shall not exceed five thousand (5,000) board feet or ten (10) cords annually, and also provided that the specific restrictions described in paragraph 4(b)(IV) shall apply to these activities;

- (c) the right to cut, mark, maintain and relocate woodland trails for non-motorized, passive recreational use;
- (d) the right to operate motor vehicles for non-recreational purposes, including, but not limited to, for the purposes of property and trail maintenance, patrol and firefighting, for the exercise of any of the rights reserved in this paragraph 4, and to allow the Grantee to exercise its rights hereunder;
- (e) the right to post a reasonable number of regulatory signs identifying Grantor as owner of the Property;
- (f) with the prior written approval of the Grantee, the right to designate one (1) "Building Envelope" and, within the Building Envelope, the right to construct, use, maintain, repair and replace one (1) single-family dwelling, and the right to construct, use, maintain, repair, replace and relocate utilities, improvements and structures, including a guest or caretaker's unit, which are customarily accessory to single-family residential use and none other, provided:
  - (i) the Building Envelope shall not exceed six (6) acres in size;

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands under seal on the day and year first above written.

No documentary stamps are required as this Conservation Restriction is a gift.

GRANTOR

*Kelton M. Burbank*

Kelton M. Burbank, Trustee  
American Chestnut Nominee Trust

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

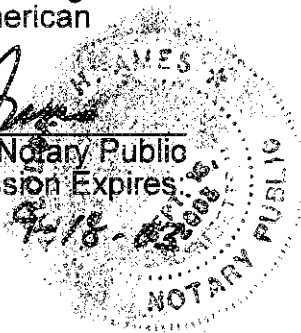
May 11, 2000

Then personally appeared the above-named Kelton M. Burbank and acknowledged the foregoing instrument to be his free act and deed, and the free act and deed of American Chestnut Nominee Trust, before me.

*Theodore H. Ames*

THEODORE H. AMES

Notary Public  
My Commission Expires



ACCEPTANCE OF GRANT

The above Conservation Restriction is accepted this 15<sup>th</sup> day of May, 2000.

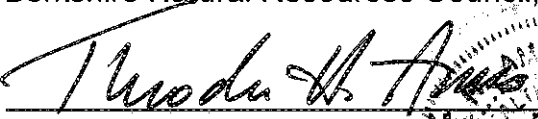
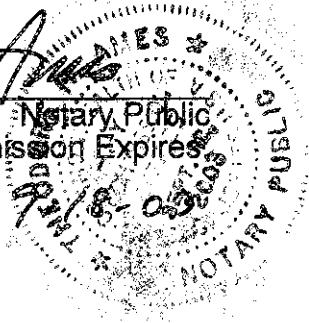
BERKSHIRE NATURAL RESOURCES COUNCIL, INC.

BY:   
George S. Wislocki  
President

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss. May 15, 2000

Then personally appeared the above-named George S. Wislocki and acknowledged the foregoing instrument to be the free act and deed of Berkshire Natural Resources Council, Inc., before me.

  
THEODORE H. AMES  
Notary Public  
My Commission Expires  


APPROVAL BY SELECTMEN

We, the undersigned members of the Board of Selectmen of the Town of Great Barrington, being duly sworn, certify that the following is a true copy of the vote taken by this Board of Selectmen at its duly called meeting on MAY 15th, 2000 and that said vote has not been rescinded.

Voted to approve the Conservation Restriction to the Berkshire Natural Resources Council, Inc., land of American Chestnut Nominee Trust, Kelton M. Burbank, Trustee, on Long Pond Road in Great Barrington, pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Subscribed and sworn to this 15th day of MAY, 2000.

Edward Prochaska  
Chairman, Board of Selectmen

Richard J. Melluzzo  
Selectman

Anthony C. Blain  
Selectman

Margaret Beckwith  
Selectman

John H. Beckwith  
Selectman

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss. MAY 15th, 2000

Then personally appeared the above-named Board of Selectmen as named above and acknowledged the foregoing instrument to be the free act and deed of the Board of Selectmen, Town of Great Barrington, before me.

Karen M. Swille  
Justice of Peace, Notary Public  
My Commission Expires June 29, 2001

APPROVAL BY SECRETARY OF ENVIRONMENTAL AFFAIRS

COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to Berkshire Natural Resources Council, Inc. has been approved as being in the public interest pursuant to G.L.M. 184:32.

Said approval is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Property, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

BY: *Bob Durand*  
Secretary of Environmental Affairs

DATED: *6/13/00*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. *June 13,* 2000

Then personally appeared the above-named *Bob Durand* and acknowledged the foregoing instrument to be the free act and deed of the Executive Office of Environmental Affairs, before me.

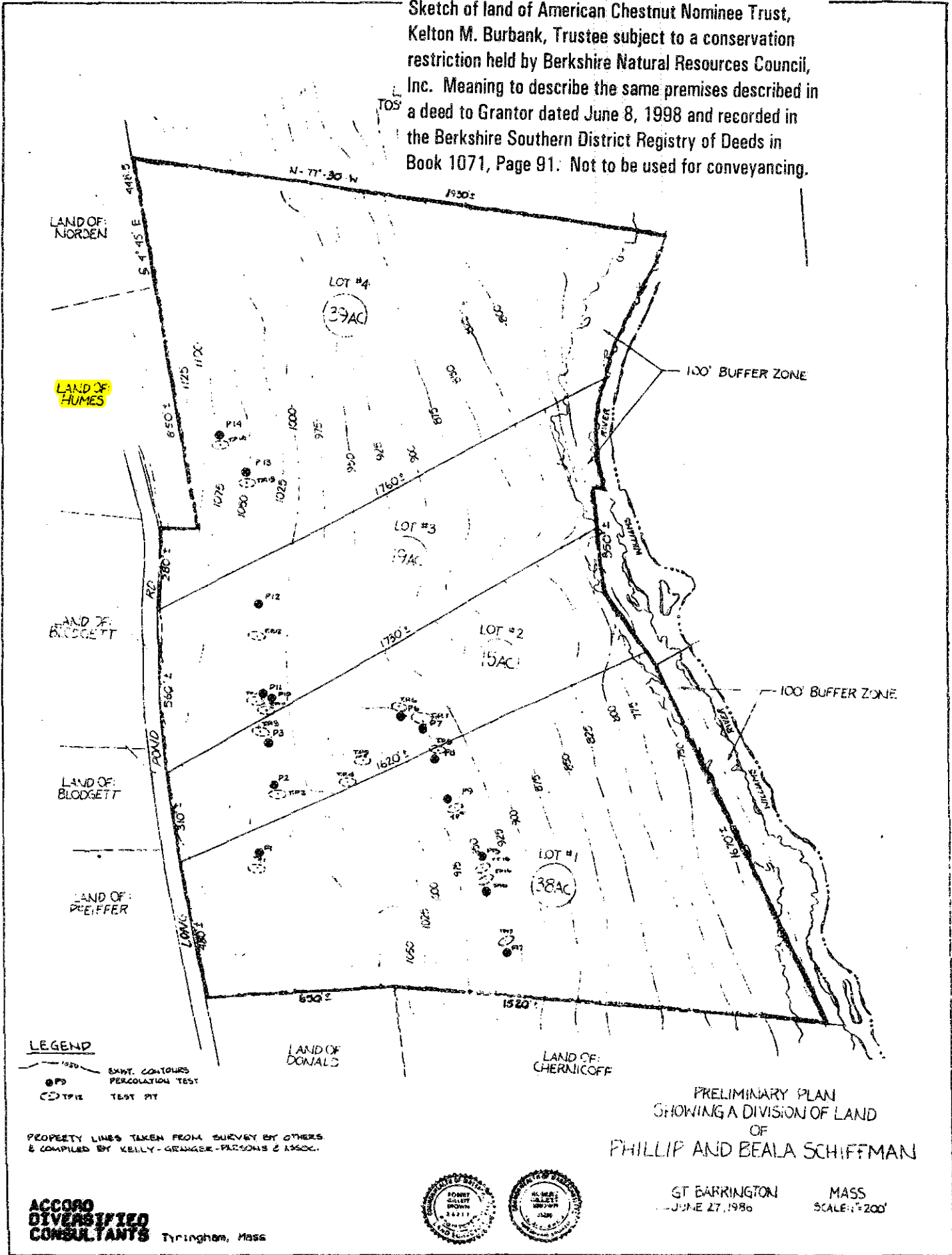
*Nancy Gabriel-Sackie*  
Notary Public  
My Commission Expires: *11-25-05*

crschiff





Sketch of land of American Chestnut Nominee Trust, Kelton M. Burbank, Trustee subject to a conservation restriction held by Berkshire Natural Resources Council, Inc. Meaning to describe the same premises described in a deed to Grantor dated June 8, 1998 and recorded in the Berkshire Southern District Registry of Deeds in Book 1071, Page 91. Not to be used for conveyancing.



**LEGEND**

- EXIST. CONTOURS
- PERCOLATION TEST
- TEST PIT

PROPERTY LINES TAKEN FROM SURVEY BY OTHERS & COMPILED BY KELLY - GRANGER - PARSONS & ASSOC.

**ACCORD  
DIVERSIFIED  
CONSULTANTS**

Tyringham, Mass



PRELIMINARY PLAN  
SHOWING A DIVISION OF LAND  
OF  
PHILLIP AND BEALA SCHIFFMAN

GT BARRINGTON  
JUNE 27, 1986

MASS  
SCALE: 1"=200'

# Attachment I

TOWN OF GREAT BARRINGTON  
Application for a Special Permit  
to the Board of Selectmen or Planning Board

SB/file

FORM SP-1  
REV. 11-2013

FOR OFFICE USE ONLY

Number Assigned 876-17 Date Received 11/7/17  
Special Permit Granting Authority SB  
Copy to Recommending Boards 11/7  
Advertised 11/17 & 11/24  
Public Hearing 12/18/17  
Fee: \$150.00 Paid: Yes

APPLICATION FOR SPECIAL  
PERMIT UNDER TOWN ZONING  
BYLAWS FOR TOWN OF  
GREAT BARRINGTON,  
MASSACHUSETTS

TOWN CLERK  
GREAT BARRINGTON  
NOV 7 2017 AM 10:0

MAP 31 LOT 14 BOOK 2197 PAGE 315 ZONING DISTRICT(S) R2, R4

Site Address: 39 Alford Rd., Gt. Barrington, MA 01230

Date of Application 11/6/17

Applicant's name and complete mailing address Donald Elitzer

39 Alford Road, Great Barrington, MA 01230

Applicant's phone number (413) 429-5628 Applicant's email address: chip.elitzer@gmail.com

Name and Address of Owner of land exactly as it appears on most recent tax bill:

Elitzer Donald B Trustee  
Elitzer Cynthia B Trustee  
39 Alford Rd  
Gt Barrington, MA 01230-2407

I (we) request a Special Permit for: a moderate impact home occupation

Under Section(s) 3.3 and 10.4 of the Great Barrington Zoning Bylaws.

**APPLICANTS MUST READ AND COMPLY WITH THE FOLLOWING:**

One Signed Original application with each of the items below, as applicable, and fourteen (14) exact copies of the entire application package are to be submitted. Applications must include:

1. Completed application form, including signatures.
2. Brief written description of how the project is in harmony with the Great Barrington Master Plan. (Copies of the Master Plan are available for free download from the Town website. Hard copies can be read at the Clerk's office or the Town libraries.)
3. Site Plan, drawn to scale, applicable to the site and the proposed use of said site for which this special permit is requested.
4. Any other specifications necessary to further describe the site or proposed use for which a special permit is requested. At least one copy of any maps being submitted shall be no larger than 11" X 17". Plans should show all existing and proposed structures, property lines and dimensions, driveways, walkways and parking areas. All proposed landscaping, parking, loading, and similar improvements must be in compliance with the applicable sections of the Zoning Bylaw.
5. Certified list of abutters within 300' on the Assessors Maps to the subject property, including map and lot number. List must be obtained from the Assessors' Office.

- 6. Zoning Map designating the zoning district(s) and location for the area for which a special permit is requested, plus a USGS map enlarged and showing the site location within the Town.
- 7. Drainage Plan indicating the destination of all runoff from the property. In the event of substantial increase in impervious surfaces, the SPGA may require calculations or expert analysis of the plan.
- 8. Landscaping Plan drawn to scale and showing existing and proposed landscaping.
- 9. If applicant and owner are different, a letter signed by the owner of the property authorizing the applicant to apply for the special permit.

**SPECIFICS:**

- 1. All site plans and specifications must be signed and dated by the preparer.
- 2. ALL OWNERS of property must also sign the application.
- 3. A copy of special permit procedures is available upon request.
- 4. Fee for application is \$150.00 to cover the cost of the public hearing notices in the newspaper and notification to parties in interest. If the cost exceeds \$150.00, the applicant shall pay the balance due upon notification from the Granting Authority.
- 5. Once all the necessary papers, maps, etc. are compiled into the required Original and Fourteen sets, call the Town Planner's office at 413-528-1619 ext. 7 to arrange an appointment to file your application. The application will be reviewed for completeness and a date for a public hearing before the Board of Selectmen or Planning Board will be scheduled. Meetings of recommending boards (e.g. Planning Board, Conservation Commission and Board of Health) will also be arranged at this time.

Donald Elitz  
Signature of Applicant

Jonathan Elitzel, Trustee  
Signature of Co-Applicant (e.g. Property Owner, if different)

\*\*\*\*\*

**PLEASE READ AND SIGN BELOW**

ALL COSTS INCURRED BY THE TOWN FOR THE EMPLOYMENT OF EXPERTS OR CONSULTANTS REQUIRED BY ANY TOWN BOARD, AND APPROVED BY THE BOARD OF SELECTMEN, FOR THE PURPOSE OF ANALYZING OR EVALUATING ANY PROJECT THAT IS A SUBJECT OF A SPECIAL PERMIT APPLICATION SHALL BE ASSESSED TO THE APPLICANT AND SHALL CONSTITUTE PART OF THE APPLICATION FEE. A COPY OF THIS REGULATION SHALL BE PROVIDED TO THE APPLICANT IF REQUESTED.

I have read the above regulation and agree to be bound by it.

Signature Donald Elitz

Signature of Co-Applicant (e.g. Property Owner) Jonathan Elitzel, Trustee

Date 11/6/17

Donald B. Elitzer  
39 Alford Road  
Great Barrington, MA 01230  
Phone: (413) 528-4693  
chip.elitzer@gmail.com

November 6, 2017

Select Board  
Town of Great Barrington  
334 Main Street  
Great Barrington, MA 01230

Gentlemen:

I am applying for a Special Permit for a Moderate Impact Home Occupation because I would like to be able to host up to four weddings or similar style celebrations a year on my property (ideally, once a month during June-September). Cindy and I have probably held about a dozen large events (125-150 people) over the 21 years that we have lived here, but all for family and friends, without compensation, most recently my oldest son's engagement party (2014) and his friend's wedding (2015). Typically, the event embraces a weekend, starting Friday evening, a "play day" on Saturday (swimming, croquet, volleyball, barbecue), and a wedding on Sunday.

The house itself would remain occupied by me throughout any event, although the kitchen and dining room would be used by the caterer for some prep work. All guest activities would be outside, including under the large tent that Classical Tents sets up on our lawn immediately adjacent to the west facade of our house. The caterer (probably Mezza Catering of Williamstown, who would provide the "curated" clients) would arrange trash removal and temporary sanitary facilities.

Our property is 36 acres, mostly forest, which shields the house and grounds from view and from most sounds. We pay the town over \$18,000 annually in property taxes, plus additional amounts for water and sewer. There are many other ongoing costs associated with maintaining the property, of course, and the venue fees that we hope to collect if we are able to go forward with this would be significant in lessening the financial burden.

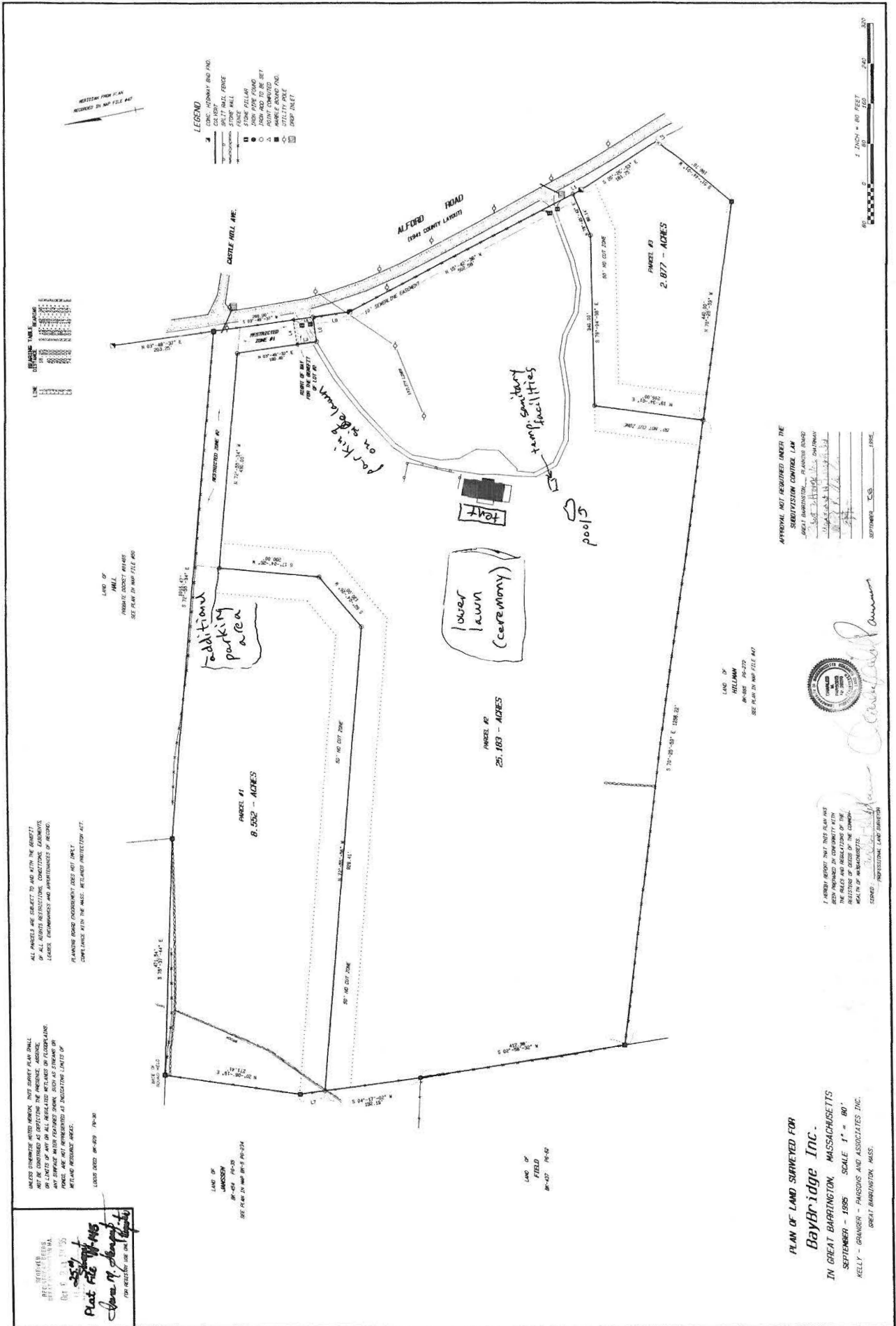
The town's economy should also benefit modestly from this occasional activity. As several wedding planners have mentioned to me, Great Barrington doesn't have any casual, non-commercial venues for larger affairs, unlike Lenox and Stockbridge. The sort of event we would host would be an upscale "destination" for guests, as most Berkshire events for out-of-towners are, and would bring a

meaningful number of visitors to our town who would spend money on lodging, restaurants, and shopping.

I definitely do not want to engage in this activity if it runs counter to the town's policy, which may not yet be set with respect to what I am proposing. Since many couples planning weddings for next summer have already settled on their venues, it is none too soon to establish whether 39 Alford Road is a viable option.

Sincerely,

A handwritten signature in blue ink that reads "Chip Eitzen". The signature is written in a cursive style with a long, sweeping underline.



39 ALFORD ROAD, GREAT BARRINGTON, MA





39 ALFORD ROAD, GREAT BARRINGTON, MA



# Attachment J

Jennifer Tabakin  
Town Manager

E-mail: [jtabakin@townofgb.org](mailto:jtabakin@townofgb.org)  
[www.townofgb.org](http://www.townofgb.org)



Town Hall, 334 Main Street  
Great Barrington, MA 01230

Telephone: (413) 528-1619 x2  
Fax: (413) 528-2290

## TOWN OF GREAT BARRINGTON MASSACHUSETTS

OFFICE OF THE TOWN MANAGER

### **SELECTBOARD'S MEETING AGENDA**

**MONDAY, DECEMBER 18, 2017**

**7:00 PM – REGULAR SESSION**

**TOWN HALL, 334 MAIN STREET**

### **ORDER OF AGENDA**

#### **7:00 PM - OPEN MEETING**

##### **1. CALL TO ORDER:**

##### **2. APPROVAL OF MINUTES:**

November 13, 2017 Regular Meeting.

##### **3. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:**

A. General Comments by the Board.

##### **4. TOWN MANAGER'S REPORT:**

A. Department Updates.

B. Project Updates.

- Roger Road

- Berkshire Aviation Enterprises (Great Barrington Airport)

##### **5. PUBLIC HEARINGS:**

A. Donald and Cynthia Elitzer for a special permit application to operate a moderate impact home occupation in a residential zone in accordance with Sections 3.1.4 G(8), 3.3 and 10.4 of the Zoning Bylaw. The Applicant seeks to host up to four (4) weddings or similar special events on the property annually at 39 Alford Road, Great Barrington, MA 01230. (Discussion/Vote)

a. Open Public Hearing

b. Explanation of Project

c. Speak in Favor/Opposition

d. Motion to Close Public Hearing

e. Motion re: Findings

f. Motion re: Approval/Denial/Table

##### **6. LICENSES OR PERMITS:**

A. 2018 ANNUAL LICENSE **RENEWALS**: (Discussion/Vote)

SB SP# 876-17

**NOTICE OF PUBLIC HEARING**

The Great Barrington Selectboard will hold a public hearing on ~~Monday, December 18, 2017~~, at 7:00 PM, at Town Hall, 334 Main Street, 2<sup>nd</sup> Floor, Great Barrington, to act on the special permit application of Donald and Cynthia Elitzer, 39 Alford Road, Great Barrington, to operate a moderate impact home occupation in a residential zone, in accordance with Sections 3.1.4 G(8), 3.3, and 10.4 of the Zoning Bylaw. The Applicant seeks to host up to four weddings or similar special events on the property annually.

Sean Stanton, Chair

Please Publish Friday, November 17, 2017 and Friday, November 24, 2017

Berkshire Record

Memorandum to the Board

The following DRAFT Findings of Fact and Basis for Decision has been drafted based on the Town's standard template for special permits. This is a working draft to guide your deliberations. It is shared with you and with the Applicant prior to the hearing. This document should be read and understood prior to making a decision.

The template states the background and relevant facts of the application as they relate to the applicable special permit criteria. It is based on the facts provided by the Applicant in their application and supplemented with facts and discussion from meetings of the recommending boards and commissions. It also includes relevant comments or information from appropriate Town staff.

This document is drafted to reach a positive decision on (i.e., to grant) the application. If the Board grants the permit, it may include certain conditions that seem appropriate to mitigate possible negative impacts of the proposal or to ensure the benefits actually accrue. If, after hearing the Applicant's testimony, public testimony, and discussing as a Board, you do not wish to grant the permit, staff can redraft the document to reflect the desire of the Board.

Finally, the findings included herein for the applicable special permit criteria, and the resulting decision, should only be accepted after you have heard all the information and you have discussed this as a Board.

**DRAFT FOR SELECTBOARD DELIBERATION:****EXHIBIT A****FINDINGS OF FACT AND BASIS FOR DECISION**

**Re: Special Permit #876-17**  
**Applicant(s): Donald and Cynthia Elitzer**

**A. Introduction**

This Special Permit application was filed on November 7, 2017 by Donald Elitzer, Owner of the residential property at 39 Alford Road, Great Barrington. The application seeks a Special Permit from the Selectboard for a moderate impact home occupation, per §3.3, so that they can use their property to host up to four weddings or similar style celebrations per year. The application includes a description of the proposed use, a map of the property, and illustrative photographs of previous events held on the property.

The Owner has hosted, without compensation, several large events for family over the years, but now they seek to use the property to host events on a limited commercial basis. However, the property is residentially zoned, and does not allow for commercial use per se. Therefore, since the principal use of the property will remain residential, and since the Owner will remain in residence during proposed events, a moderate impact home occupation special permit is sought.

**B. General Findings**

The property is located on the west side of Alford Road, in an R-2 / R-4 zone. The property is 36 acres, mostly forest, which shields the house and grounds from public view and from most sounds. The surrounding area is very low density residential use and protected farm fields, and there are residences within 600 feet of the subject residence. The site is accessible via a

semicircular driveway that has clear sight lines where it intersects Alford Road. **Parking for 60 or more cars is available on-site in the lawn along the driveway and at the tennis courts.**

The Owner proposes that **events will have not more than 150 people**, excepting event staff. There would be **not more than four events per year**, with approximately **one each in the months of June through September**. Events would be up to three days (Friday through Sunday) in length, but **no guests would stay overnight at the residence**. **Owner will remain onsite throughout any event**, although the kitchen and dining room would be used by the caterer for some prep work. All guest activities would be outside, including under a large tent set up on the lawn immediately adjacent to the west facade of the house. An event caterer would provide the clients, would arrange trash removal and temporary sanitary facilities.

**The Planning Board reviewed the proposal, conducted a site visit, and reviewed the proposal against its Site Plan Review criteria and the requirements of §§3.3.4 and 3.3.5. The Planning Board discussed parking and safety and found no issues. The Planning Board discussed possible noise impacts from late night music, and determined noise impacts are not likely to occur.** The Planning Board made a favorable recommendation on the Special Permit, and suggested that the Selectboard review the Town's noise ordinance (ch. 115) to allow for increased noise after 8pm. If approved by the Selectboard, this would be an acceptable deviation from the provisions set forth at §3.3.5, items 6 and 9. The Planning Board also noted that the one-year review and possible renewal by the special permit granting authority as forth at §3.3.4, item 4 will help ensure continued conformance.

The Planning Board also approved Site Plan Review as required by §3.3.4. **The Planning Board required that an attendant be present to direct vehicles as they enter and exit from the property, and that trash must be removed at the end of each event.**

The Board of Health also reviewed the proposal and made the following recommendations to the Selectboard:

- The Health Department must be given advance notice of all events involving food services.
- All caterers must have a valid license in the Town of Great Barrington prior to providing food services for the event.
- No food preparation is allowed in residential kitchen, food is to be provided by properly permitted caterer who will provide the Great Barrington Health Department will all necessary documentation.
- The owner shall be responsible for ensuring portable toilets are present and in working order for each event.
- The Board of Health suggests conditionally approving this special permit for a one year probation period, with a review of the events after one calendar year.

The Conservation Commission concluded they have no concerns or jurisdiction per the Wetlands Act or Scenic Mountains Act.

### C. General Special Permit Criteria and Findings

§10.4.2 of the Zoning Bylaw, granting of a special permit, requires a written determination by the Special Permit Granting Authority "that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of

the site, and of the proposal in relation to that site.” This determination shall include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Consideration of the Criteria in relation to SP #876-17:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” The six criteria and the Board’s considerations in relation each are detailed below:

1. Social, economic, or community needs which are served by the proposal.
  - The moderate impact home occupation permit will allow for the use of the property with limited or **no anticipated negative impact on neighbors or the community.**
2. Traffic flow and safety, including parking and loading.
  - The attendance limit of 150 people, many arriving in carpools or shuttles will not negatively impact traffic or parking. **Entry and exit to the site is safe and will be managed by attendants. There is adequate parking on site for the size of the events. No negative impacts are anticipated.**
3. Adequacy of utilities and other public services.
  - Event caterers will provide all sanitary facilities necessary for the events and these items will be reviewed by the Health Department for each event. No negative impacts are anticipated.
4. Neighborhood character and social structures.
  - The land use character of the area is low density residential. Addition of up to four events of not more than 150 people at this location will have **no noticeable change to the character. Conformance with the requirements of the home occupation standards of the zoning bylaw will ensure continued compliance and forestall possible negative impacts.**
5. Impacts on the natural environment.
  - The site is already developed and the lot is already paved. This proposal will not further develop it or have any noticeable impact on the natural environment.
6. Potential fiscal impact, including impact on town services, tax base, and employment.
  - The occasional use of the property as a home occupation in this manner will have no negative impacts. It will allow the homeowner to offset some of their property tax expenses. The town's economy should also benefit modestly from this occasional activity.

Finding:

In consideration of the above Findings, this Selectboard finds that the overall benefits of the proposal outweigh any possible detrimental impacts, and that the following conditions are required to ensure this benefit:

D. Proposed Conditions

1. **Conformance to all requirements of Section 3.3.5 of the Zoning Bylaw, Standards for Home Occupations**, except that amplified music is permitted up to midnight during events.
2. Fireworks, if any, are permitted once per event, not to occur later than 10:00PM, and only after proper permit from the Fire Department. The Selectboard, Fire Department, and Police Department shall be given not less than two-week advance notice of planned fireworks.
3. The Health Department shall be given not less than two-week advance notice of all events involving food services.
4. All caterers must have a valid license in the Town of Great Barrington prior to providing food services for the event.
5. No food preparation is allowed in residential kitchen unless authorized by the Health Department. Food is to be provided by properly permitted caterer who will provide the Health Department will all necessary documentation.
6. The owner shall be responsible for ensuring enough portable toilets are present and in working order for each event.
7. This special permit is for an initial period not exceeding one year, commencing on the date of the first event. Renewal, and any subsequent renewals, of the permit may be granted by the Selectboard, after a public hearing, for a period not to exceed three years, upon certification by the Building Inspector and Health Department that the home occupation has complied with the Zoning Bylaw and the conditions of this permit.
8. The special permit pertains only to the specific use of the original applicant as described in the special permit, and does not transfer with the property.



**SP # 876-17**

Donald and Cynthia Elitzer, 39 Alford Road, Great Barrington, to operate a moderate impact home occupation in a residential zone, in accordance with Sections 3.1.4 G(8), 3.3, and 10.4 of the Zoning Bylaw. The Applicant seeks to host up to four weddings or similar special events on the property annually.

**DRAFT MOTIONS****VOTE ON FINDINGS**

*(If the Board has amended the Findings based on the Public Hearing and its discussion, be sure to specify those changes and approve the findings "as amended.")*

**Motion:** Move to approve the Findings of Fact for Special Permit #876-17 for Donald and Cynthia Elitzer, as *submitted* and referenced as Exhibit A.

**Second:** \_\_\_\_\_

**Roll call vote:** Cooke \_\_\_\_ Abrahams \_\_\_\_ Bailly \_\_\_\_  
Bannon \_\_\_\_ Stanton \_\_\_\_

**VOTE ON SPECIAL PERMIT**

**Motion:** Move to approve, in view of the approved Findings of Fact, Special Permit #876-17 for Donald and Cynthia Elitzer, 39 Alford Road, Great Barrington, to operate a moderate impact home occupation in a residential zone, in order to host up to four weddings or similar special events on the property annually, in accordance with Sections 3.1.4 G(8), 3.3, and 10.4 of the Zoning Bylaw, with the following special conditions:

1. Conformance to all requirements of Section 3.3.5 of the Zoning Bylaw, Standards for Home Occupations, except that amplified music is permitted up to midnight during events.
2. Fireworks, if any, are permitted once per event, not to occur later than 10:00PM, and only after proper permit from the Fire Department. The Selectboard, Fire Department, and Police Department shall be given not less than two-week advance notice of planned fireworks.
3. The Health Department shall be given not less than two-week advance notice of all events involving food services.
4. All caterers must have a valid license in the Town of Great Barrington prior to providing food services for the event.
5. No food preparation is allowed in residential kitchen unless authorized by the Health Department. Food is to be provided by properly permitted caterer who will provide the Health Department with all necessary documentation.
6. The owner shall be responsible for ensuring enough portable toilets are present and in working order for each event.
7. This special permit is for an initial period not exceeding one year, commencing on the date of the first event. Renewal, and any subsequent renewals, of the permit may be granted by the Selectboard, after a public hearing, for a period not to exceed three years, upon certification by the Building Inspector and Health Department that the home occupation has complied with the Zoning Bylaw and the conditions of this permit.

8. The special permit pertains only to the specific use of the original applicant as described in the special permit, and does not transfer with the property.

**Second:** \_\_\_\_\_

**Roll call vote:** Cooke \_\_\_\_ Abrahams \_\_\_\_ Bailly \_\_\_\_  
Bannon \_\_\_\_ Stanton \_\_\_\_

DRAFT



TOWN OF GREAT BARRINGTON  
MASSACHUSETTS

PLANNING BOARD

December 15, 2017

Selectboard  
Town Hall  
334 Main Street  
Great Barrington, MA 01230

RE: Special Permit 876-17, 39 Alford Road

Dear Members of the Selectboard;

At its meeting of December 14, 2017, the Planning Board voted to send a favorable recommendation on the Special Permit application submitted by Donald and Cynthia Elitzer, 39 Alford Road, to operate a moderate impact home occupation in a residential zone. The Board suggested that the Selectboard review the Town's noise ordinance to allow for noise after the typical hours.

The Board also approved Site Plan Review with two conditions: (1) that an attendant be present to direct entry and exit from the property, (2) trash shall be removed at the end of each event.

Thank you for the opportunity to comment on this matter.

Sincerely,

Kimberly L. Shaw  
Planning Board Secretary

cc: Chris Rembold, Town Planner

# Attachment K

**SELECTBOARD'S MEETING MINUTES**

**MONDAY, DECEMBER 18, 2017**

**7:00 PM – REGULAR SESSION**

**TOWN HALL, 334 MAIN STREET**

**PRESENT:**

Sean Stanton  
Steve Bannon  
Dan Bailly  
Ed Abrahams  
Bill Cooke

Town Manager, Jennifer Tabakin

**7:00 PM - OPEN MEETING**

**1. CALL TO ORDER:**

Chair Sean Stanton called the meeting to order at 7PM.

**2. APPROVAL OF MINUTES:**

November 13, 2017 Regular Meeting.

**MOTION:** Steve Bannon motioned to approve the November 13, 2017 Meeting Minutes

**SECOND:** Dan Bailly

**VOTE: 5-0**

**3. SELECTBOARD'S ANNOUNCEMENTS/STATEMENTS:**

A. General Comments by the Board.

**4. TOWN MANAGER'S REPORT:**

A. Department Updates.

Cable Advisory meeting was re-scheduled for Tuesday December 19, 2017 at 6:00PM. The meeting will take place in the Town Hall Conference Room.

B. Project Updates.

- **Roger Road**

Gary O'Brien Property Services/GJO LLC, 11 Roger Road was served with the Cease and Desist Order on December 1, 2017. GJO can appeal the Order to the ZBA within 30 days. The Town Manager said that if the neighbors have any questions regarding this process they can contact her. Roger Belanger, 43 Fairview Terrace, asked for clarification Cease and Desist Order that was issued formerly to the trucking business. Paul D. Jones, 19 Blue Hill Rd., said that it is negligence to send the Building Inspector to defend this appeal in Superior Court without proper legal

representation. Sean Stanton clarified that the Town Manager should come back for further approval from the Board when it comes time to appoint an attorney.

**MOTION:** Steve Bannon motioned to appoint legal counsel to represent the Town's Building Inspector if this appeal goes to the Zoning Board of Appeals or Superior Court.

**SECOND:** Dan Bailly

**VOTE: 5-0**

Eileen Mooney, asked who is representing Mr. O'Brien's trucking business. Ms. Tabakin said that Ed McCormick is representing Gary O'Brien. Ruby Chang, 1 Roger Road, asked for clarification on the two avenues of enforcement. Ms. Tabakin said that the owners can appeal the Cease and Desist Order that was issued on December 1, 2017. Appealing the Cease and Desist Order would require the recipients to submit a site plan review that would be reviewed by the Planning Board.

#### - Berkshire Aviation Enterprises (Great Barrington Airport)

Ed Abrahams said that an underground fuel tank replacement within a water quality district should have a public approval process, especially when the town has a bylaw that prevents this kind of work. Mr. Abrahams said that a Special Permit would allow the town to learn about the process of removing and replacing the storage tanks, the kind of storage tanks required by DEP, and how long the airport intends to use the fueling trucks. Mr. Abrahams said that it is concerning that we have not been notified by the airport and that no one from the public has been given the chance to weigh in. It is unclear who would require the GB Airport to apply for a special permit for work done in a water quality district. Ms. Tabakin said that Town Counsel reported that our bylaw requires a special permit only if there is alteration to the pre-existing non-conforming use, replacing an underground fuel tank is not altering the use. Ms. Tabakin read an email from the airport manager that was sent to the Town Planner. The airport managers said that they intend to replace the existing storage tank with a double walled tank equal in size and in the same location as the previous underground tank.

### 5. PUBLIC HEARINGS:

A. Donald and Cynthia Elitzer for a special permit application to operate a moderate impact home occupation in a residential zone in accordance with Sections 3.1.4 G(8), 3.3 and 10.4 of the Zoning Bylaw. The Applicant seeks to host up to four (4) weddings or similar special events on the property annually at 39 Alford Road, Great Barrington, MA 01230. (Discussion/Vote)

a. Open Public Hearing

**MOTION:** Steve Bannon motioned to open the public hearing.

**SECOND:** Dan Bailly

**VOTE: 5-0**

b. Explanation of Project

Chip Elitzer said that the Board of Health and the Planning Board recommended a probationary period of one year. Mr. Elitzer asked the Selectboard that that year begin with the first event and not the calendar year. Dan Bailly asked if this venture is successful would they consider expanding beyond the four annual events. Mr. Elitzer said they are not going to expand beyond four events with no more than 150 attendees per event. Sean Stanton asked if all of Mr. Elitzer's immediate neighbors have been informed of these potential events. Mr. Elitzer said that they had, but most of their neighbors are remote, his property is completely surrounded by woods and fields.

c. Speak in Favor/Opposition

d. Motion to Close Public Hearing

**MOTION:** Steve Bannon motioned to close the public hearing

**SECOND:** Dan Bailly

**VOTE: 5-0**

e. Motion re: Findings

**MOTION:** Steve Bannon motioned to approve the Findings of Fact for Special Permit #876-17 for Donald and Cynthia Elitzer, as submitted and referenced as Exhibit A.

**SECOND:** Dan Bailly

**ROLL CALL VOTE:** Sean Stanton: Yes. Steve Bannon: Yes. Dan Bailly: Yes. Ed Abrahams: Yes. Bill Cooke: Yes.

### EXHIBIT A

#### **FINDINGS OF FACT AND BASIS FOR DECISION**

**Re: Special Permit #876-17**  
**Applicant(s): Donald and Cynthia Elitzer**

##### A. Introduction

This Special Permit application was filed on November 7, 2017 by Donald Elitzer, Owner of the residential property at 39 Alford Road, Great Barrington. The application seeks a Special Permit from the Selectboard for a moderate impact home occupation, per §3.3, so that they can use their property to host up to four weddings or similar style celebrations per year. The application includes a description of the proposed use, a map of the property, and illustrative photographs of previous events held on the property.

The Owner has hosted, without compensation, several large events for family over the years, but now they seek to use the property to host events on a limited commercial basis. However, the property is residentially zoned, and does not allow for commercial use per se. Therefore, since the principal use of the property will remain residential, and since the Owner will remain in residence during proposed events, a moderate impact home occupation special permit is sought.

##### B. General Findings

The property is located on the west side of Alford Road, in an R-2 / R-4 zone. The property is 36 acres, mostly forest, which shields the house and grounds from public view and from most sounds. The surrounding area is very low density residential use and protected farm fields, and there are residences within 600 feet of the subject residence. The site is accessible via a semicircular driveway that has clear sight lines where it intersects Alford Road. Parking for 60 or more cars is available on-site in the lawn along the driveway and at the tennis courts.

The Owner proposes that events will have not more than 150 people, excepting event staff. There would be not more than four events per year, with approximately one each in the months of June through September. Events would be up to three days (Friday through Sunday) in length, but no guests would stay overnight at the residence. Owner will remain onsite throughout any event, although the kitchen and dining room would be used by the caterer for some prep work. All guest activities would be outside, including under a large tent set up on the lawn immediately adjacent to the west facade of the house. An event caterer would provide the clients, would arrange trash removal and temporary sanitary facilities.

The Planning Board reviewed the proposal, conducted a site visit, and reviewed the proposal against its Site Plan Review criteria and the requirements of §§3.3.4 and 3.3.5. The Planning Board discussed parking and safety and found no issues. The Planning Board discussed possible noise impacts from late night music, and determined noise impacts are not likely to occur. The Planning Board made a favorable recommendation on the Special Permit, and suggested that the Selectboard review the Town's noise ordinance (ch. 115) to allow for increased noise after 8pm. If approved by the Selectboard, this would be an acceptable deviation from the provisions set forth at §3.3.5, items 6 and 9. The Planning Board also noted that the one-year review and possible renewal by the special permit granting authority as forth at §3.3.4, item 4 will help ensure continued conformance.

The Planning Board also approved Site Plan Review as required by §3.3.4. The Planning Board required that an attendant be present to direct vehicles as they enter and exit from the property, and that trash must be removed at the end of each event.

The Board of Health also reviewed the proposal and made the following recommendations to the Selectboard:

- The Health Department must be given advance notice of all events involving food services.
- All caterers must have a valid license in the Town of Great Barrington prior to providing food

services for the event.

- No food preparation is allowed in residential kitchen, food is to be provided by properly permitted caterer who will provide the Great Barrington Health Department will all necessary documentation.
- The owner shall be responsible for ensuring portable toilets are present and in working order for each event.
- The Board of Health suggests conditionally approving this special permit for a one year probation period, with a review of the events after one calendar year.

The Conservation Commission concluded they have no concerns or jurisdiction per the Wetlands Act or Scenic Mountains Act.

C. General Special Permit Criteria and Findings

§10.4.2 of the Zoning Bylaw, granting of a special permit, requires a written determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” This determination shall include consideration of the following six criteria:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and,
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Consideration of the Criteria in relation to SP #876-17:

Per §10.4.2 of the Zoning Bylaw, granting of any special permit requires a determination by the Special Permit Granting Authority “that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.” The six criteria and the Board’s considerations in relation each are detailed below:

1. Social, economic, or community needs which are served by the proposal.
  - The moderate impact home occupation permit will allow for the use of the property with limited or **no anticipated negative impact on neighbors or the community.**
2. Traffic flow and safety, including parking and loading.
  - **The attendance limit of 150 people, many arriving in carpools or shuttles will not negatively impact traffic or parking. Entry and exit to the site is safe and will be managed by attendants. There is adequate parking on site for the size of the events. No negative impacts are anticipated.**
3. Adequacy of utilities and other public services.
  - Event caterers will provide all sanitary facilities necessary for the events and these items will be reviewed by the Health Department for each event. No negative impacts are anticipated.
4. Neighborhood character and social structures.
  - The land use character of the area is low density residential. **Addition of up to four events of not more than 150 people at this location will have no noticeable change to the character. Conformance with the requirements of the home occupation standards of the zoning bylaw will ensure continued compliance and forestall possible negative impacts.**
5. Impacts on the natural environment.
  - The site is already developed and the lot is already paved. This proposal will not further develop it or have any noticeable impact on the natural environment.



6. Potential fiscal impact, including impact on town services, tax base, and employment.
  - The occasional use of the property as a home occupation in this manner will have no negative impacts. It will allow the homeowner to offset some of their property tax expenses. The town's economy should also benefit modestly from this occasional activity.

Finding:

In consideration of the above Findings, this Selectboard finds that the overall benefits of the proposal outweigh any possible detrimental impacts, and that the following conditions are required to ensure this benefit:

D. Proposed Conditions

1. **Conformance to all requirements of Section 3.3.5 of the Zoning Bylaw, Standards for Home Occupations**, except that amplified music is permitted up to midnight during events.
2. Fireworks, if any, are permitted once per event, not to occur later than 10:00PM, and only after proper permit from the Fire Department. The Selectboard, Fire Department, and Police Department shall be given not less than two-week advance notice of planned fireworks.
3. The Health Department shall be given not less than two-week advance notice of all events involving food services.
4. All caterers must have a valid license in the Town of Great Barrington prior to providing food services for the event.
5. No food preparation is allowed in residential kitchen unless authorized by the Health Department. Food is to be provided by properly permitted caterer who will provide the Health Department will all necessary documentation.
6. The owner shall be responsible for ensuring enough portable toilets are present and in working order for each event.
7. This special permit is for an initial period not exceeding one year, commencing on the date of the first event. Renewal, and any subsequent renewals, of the permit may be granted by the Selectboard, after a public hearing, for a period not to exceed three years, upon certification by the Building Inspector and Health Department that the home occupation has complied with the Zoning Bylaw and the conditions of this permit.
8. The special permit pertains only to the specific use of the original applicant as described in the special permit, and does not transfer with the property.

f. Motion re: Approval/Denial/Table

**MOTION:** Steve Bannon motioned to approve, in view of the approved Findings of Fact, Special Permit #876-17 for Donald and Cynthia Elitzer, 39 Alford Road, Great Barrington, to operate a moderate impact home occupation in a residential zone, in order to host up to four weddings or similar special events on the property annually, **in accordance with Sections 3.1.4 G(8), 3.3, and 10.4 of the Zoning Bylaw**, with the following special conditions:

1. **Conformance to all requirements of Section 3.3.5 of the Zoning Bylaw, Standards for Home Occupations**, except that amplified music is permitted up to midnight during events.
2. Fireworks, if any, are permitted once per event, not to occur later than 10:00PM, and only after proper permit from the Fire Department. The Selectboard, Fire Department, and Police Department shall be given not less than two-week advance notice of planned fireworks.
3. The Health Department shall be given not less than two-week advance notice of all events involving food services.
4. All caterers must have a valid license in the Town of Great Barrington prior to providing food services for the event.
5. No food preparation is allowed in residential kitchen unless authorized by the Health Department. Food is to be provided by properly permitted caterer who will provide the Health Department will all necessary documentation.
6. The owner shall be responsible for ensuring enough portable toilets are present and in working order for each event.
7. This special permit is for an initial period not exceeding one year, commencing on the date of the first event. Renewal, and any subsequent renewals, of the permit may be granted by the Selectboard, after a public hearing, for a period not to exceed three years, upon certification by the Building Inspector and Health Department that the home occupation has complied with the Zoning Bylaw

and the conditions of this permit.

8. The special permit pertains only to the specific use of the original applicant as described in the special permit, and does not transfer with the property.

**SECOND:** Dan Bailly

**ROLL CALL VOTE:** Sean Stanton: Yes. Steve Bannon: Yes. Dan Bailly: Yes. Ed Abrahams: Yes. Bill Cooke: Yes.

**6. LICENSES OR PERMITS:**

**A. 2018 ANNUAL LICENSE RENEWALS:** (Discussion/Vote)

**Common Victualler Restaurant–All Alcoholic**

1. 20 Railroad Public House
2. Aegean Breeze
3. Allium
4. Aroma Bar & Grill
5. Bizen
6. Bogies
7. Brick House Pub, The
8. Café Adam
9. Castle Street Café
10. Cove Bowling & Entertainment
11. Crissey Farm Catering
12. East, The
13. Egremont Country Club
14. Fiesta Bar & Grill
15. Four Brothers Pizza Inn
16. Fuel
17. GB Eats
18. I.E., Inc.
19. Koi Chinese Restaurant
20. Manhattan Pizza
21. Market Place Kitchen Table
22. Prairie Whale
23. Risingdale Café
24. Rubiner's Cheesemonger's & Grocers, LLC
25. Thornewood Inn
26. Triplex, The
27. Well, The
28. Xicohtencatl

**MOTION:** Steve Bannon motioned to approve all Common Victualler Restaurant- All Alcoholic Licenses

**SECOND:** Dan Bailly

**VOTE: 5-0**

**Common Victualler Restaurant–Wine and Malt**

1. Baba Louie's
2. Barrington Brewery
3. Bizalion's Fine Food, LTD
4. Great Barrington Pizza House, Inc.
5. Naji's
6. Patisserie Lenox
7. Siam Square Fine Thai Cuisine
8. Tangier Café

# Attachment L



**TOWN OF GREAT BARRINGTON, MASSACHUSETTS**

**NOTICE FOR RECORDING IN THE REGISTRY  
OF A DECISION TO GRANT A SPECIAL PERMIT OR ANY EXTENSION,  
MODIFICATION OR RENEWAL OF A SPECIAL PERMIT**

TO: Donald and Cynthia Eltizer CASE NO.: 876-17

OWNER: Donald B. Elitzer Revocable Trust  
Donald B. Elitzer, Trustee and Cynthia B. Elitzer, Trustee

ADDRESS: 39 Alford Road  
Great Barrington, MA 01230

To permit a moderate impact home occupation in a residential zone, so Owner may host up to four weddings or similar special events on the property annually, in accordance with Sections 3.1.4 G(8), 3.3, and 10.4 of the Zoning Bylaw.

**Identity of land affected:**

The record title standing in the name of:

Donald B. Elitzer, Trustee and Cynthia B. Elitzer, Trustee  
Name

39 Alford Road Great Barrington, MA 01230  
Street Town State Zip

by deed duly recorded in the Southern Berkshire District, Berkshire County Registry of Deeds in Book 2197 at Page 315, and Land Court, Certificate No:      Book      Page     .

The special permit was granted in accordance with the plans submitted and 10.4 of the Zoning Bylaw, with the following conditions:


1. **Conformance to all requirements of Section 3.3.5 of the Zoning Bylaw, Standards for Home Occupations**, except that amplified music is permitted up to midnight during events.
2. Fireworks, if any, are permitted once per event, not to occur later than 10:00PM, and only after proper permit from the Fire Department. The Selectboard, Fire Department, and Police Department shall be given not less than two-week advance notice of planned fireworks.
3. The Health Department shall be given not less than two-week advance notice of all events involving food services.
4. All caterers must have a valid license in the Town of Great Barrington prior to providing food services for the event.
5. No food preparation is allowed in residential kitchen unless authorized by the Health Department. Food is to be provided by properly permitted caterer who will provide the Health Department will all necessary documentation.
6. The owner shall be responsible for ensuring enough portable toilets are present and in working order for each event.
7. This special permit is for an initial period not exceeding one year, commencing on the date of the first event. Renewal, and any subsequent renewals, of the permit may be granted by the Selectboard, after a public hearing, for a period not to exceed three years, upon certification by the Building Inspector and Health Department that the home occupation has complied with the Zoning Bylaw and the conditions of this permit.
8. The special permit pertains only to the specific use of the original applicant as described in the special

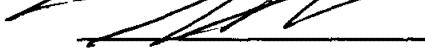
permit, and does not transfer with the property.

The decision of said Board is on file with the papers and plans in the office of the Town Clerk.

Signed and certified this 3<sup>rd</sup> day of January, ~~2017~~ 2018

**GREAT BARRINGTON SELECTBOARD:**

  
\_\_\_\_\_  
**CHAIR**

  
\_\_\_\_\_  
**CLERK**

**CERTIFICATE BY THE TOWN CLERK FOR FILING THE DECISION IN THE REGISTRY:**

This is to certify that twenty (20) days have elapsed since filing of the above decision with this office and no appeal has been filed, or an appeal has been filed and denied in the case.

Maria Y. Ryan, MMC  
Signature and Seal of the Town Clerk  
Town Clerk  
Jan 29, 2018

**ATTEST: Berkshire South Wanda M. Beckwith Register**

# Attachment M

**Edwin May**

---

**From:** Chris Rembold  
**Sent:** Wednesday, August 26, 2020 4:42 PM  
**To:** Edwin May; Charles Burger; Rebecca Jurczyk  
**Subject:** RE: Sign-off

In my opinion, if the property is being rented for this purpose, as opposed to being used by the property owner or lawful tenant on a noncommercial basis for a wedding, then it would be an unpermitted commercial use in a residential zone.

Chris



**Christopher Rembold, AICP**

Assistant Town Manager  
Director of Planning and  
Community Development  
413-528-1619 ext. 108  
crembold@townofgb.org

Town of Great Barrington  
334 Main Street  
Great Barrington MA 01230



The Secretary of State's office has determined that most e-mails to and from municipal offices and officials are public records. Consequently, confidentiality should not be expected.

**From:** Edwin May <EMay@Townofgb.org>

**Sent:** Wednesday, August 26, 2020 2:18 PM

**To:** Charles Burger

**Subject:** Sign-off

This is the Big property on Long Pond Rd, rented out on Air B n B, where we get complaints about noise and big weddings happening on weekends.

BOH, Does the floor plan align with new Covid-19 requirements for gatherings?

Planning, this is not a homeowner private wedding...most guests will be from out of town.

Can this permit be issued?

The Building Department has received a request for a permit. Please review <http://permiteyes.com/berkshire/greatbarrington/loginpage.asp> for giving preliminary clearance and sign off.

App Number:

Applicant/Owner: Classical Tents

Address: 250 LONG POND RD

City:

State:

**For Date: 08/07/2020 - Friday**

20-7241 2228 Phone - NOISE COMPLAINT Peace Restored 3  
 Call Taker: HAMMER, BRANDON  
 Location/Address: [HOU] 250 LONG POND RD  
 Calling Party: DODGE, DEBORAH  
 ID:  
 ID: Disp-22:36:54 Enrt-22:36:57 Arvd-22:44:17 Clrd-22:51:32  
 ID: Disp-22:37:23 Enrt-22:37:27 Arvd-22:45:47 Clrd-22:51:28  
 Narrative: HAMMER, BRANDON  
 ABOVE STATES LOUD MUSIC, MEGAPHONES, AND SINGING AT 250 LONG POND  
 Narrative: HAMMER, BRANDON  
 RESIDENTS AGREED TO TURN DOWN MUSIC

**For Date: 09/23/2020 - Wednesday**

20-9011 2051 Phone - NOISE COMPLAINT LOGGED 3  
 Call Taker: COBB, OLIVIA  
 Primary Id: HAMMER, BRANDON  
 Location/Address: [HOU] BUTTON DOWN LN  
 Calling Party: LOCKHART, DAVID M  
 ID:  
 ID: Disp-20:56:38 Enrt-20:56:42 Arvd-21:07:15 Clrd-21:25:09  
 Narrative: COBB, OLIVIA  
 CALLER STATES CONTRACTORS STILL ON JOBSITE NEAR LONG POND INTERSECTION, VERY NOISEY  
 Narrative: HAMMER, BRANDON  
 QUIET UPON ARRIVAL

**For Date: 10/07/2020 - Wednesday**

20-9501 0926 Phone - CALL FOR SERVICE Services Rendered 3  
 Call Taker: BRAGDON, JAMES  
 Location/Address: [HOU] 325 LONG POND RD  
 Calling Party: MCHAHAN, TE  
 Involved Party: FENNELL, PATRICK J  
 ID:  
 ID: Disp-09:40:06 Arvd-09:40:10 Clrd-09:44:38  
 Vehicle: GRN 2006 TOYT SIENNA Reg: PC MA 296P27 VIN: 5TDZA23C86S442150  
 Narrative: BRAGDON, JAMES  
 ABOVE SAME CALLED AND REPORTED HEARING HER NEIGHBOR YELL I'M GOING TO KILL MYSELF. THINKS IT'S COMING FROM 329 LONG POND RD. 30 TO SAME.  
 Narrative: BRAGDON, JAMES  
 30 SPOKE WITH CONSTRUCTION WORKER WHO YELLED OUT LOUD AT HIS EQUIPMENT.

20-9507 1434 Phone - ANIMAL CALL Services Rendered 3  
 Call Taker: BRAGDON, JAMES  
 Location/Address: [HOU] 346 LONG POND RD  
 Calling Party: BROWNE, KEN  
 Narrative: BRAGDON, JAMES  
 ABOVE SAME CALLED AND ADVISED HE'S TAKEN IN A TAN HUSKY HE FOUND WALKING ON LONG POND RD. MESSAGE LEFT ON SHEP'S CELL AND HOME PHONE ABOUT SAME.

20-9512 1711 Phone - ROAD HAZARD Taken/Referred to Other Agency



Selective Search From: 05/21/2016 Thru: 05/21/2021 0000 - 2359 Printed: 05/21/2021

Disp-22:16:39 Enrt-22:16:47 Arvd-22:31:27 Clrd-10/17/2019 @ 00:54:58  
 InQrtsUnavl-00:54:58 InSrvce-00:54:58  
 Fire Unit: ENG2-Pumper-GB Engine 2  
 Disp-22:23:06 Enrt-22:23:09 Clrd-10/17/2019 @ 01:09:21  
 InQrtsUnavl-01:09:25 InSrvce-01:09:53

Narrative: COBB, OLIVIA  
 CALLER STATES LARGE TREE DOWN ONTO HOME, TOOK DOWN WIRES AND TREE IS AT REST ON HOME

Narrative: COBB, OLIVIA  
 FD DISPATCHED

Narrative: COBB, OLIVIA  
 NO INJURIES REPORTED AT THIS TIME.

Narrative: COBB, OLIVIA  
 31 STUC ON LONG POND WITH TREE DOWN, 401 DISPATCHED FOR MUTUAL AID

Narrative: COBB, OLIVIA  
 401 CANCELED, 31 WAS ABLE TO GET AROUND TREE DOWN

Narrative: COBB, OLIVIA  
 NATY GRID NOTIFIED

Narrative: COBB, OLIVIA  
 26 REPORTS, SERVICE LINE DROPPED, WIRE IS STILL LIVE AT THIS TIME.

For Date: 11/02/2019 - Saturday

19-12188 2009 Phone - NOISE COMPLAINT Services Rendered 3

Call Taker: CASEY, ELIAS  
 Location/Address: [HOU] 250 LONG POND RD  
 Calling Party: SEGALL, SUSAN  
 ID:

Disp-20:15:27 Enrt-20:15:30 Arvd-20:31:21 Clrd-20:31:24  
 Narrative: CASEY, ELIAS  
 REPORTS LARGE PARTY AT 250 LONG POND, REQ AN OFFICER SPEAK WITH THEM REGARDING NOISE ORDINANCE

Narrative: CASEY, ELIAS  
 535 REPORTS WEDDING PARTY AT ABOVE. REQUESTED TO TURN MUSIC DOWN, SO DONE.

For Date: 12/10/2019 - Tuesday

19-13801 2357 Radio - WIRES DOWN LOGGED 1

Call Taker: CARLOTTO, ADAM  
 Location/Address: [HOU] 331 LONG POND RD  
 Narrative: CARLOTTO, ADAM

H10 REPORTS TREE INTO THE WIRE IAO 331 LONG POND.

Narrative: CARLOTTO, ADAM  
 NAT GRID ADVISED. UNKNOWN ETA.

For Date: 12/11/2019 - Wednesday

19-13802 0013 Other - SHIFT CHANGE ROLL CALL 3

Call Taker: PEEBLES, CHRISTOPHER  
 Location: [GRE]  
 Narrative: PEEBLES, CHRISTOPHER  
 SHIFT CHANGE: SNOW, 30\*

Narrative: PEBBLES, CHRISTOPHER  
UNITS CLEAR

For Date: 06/29/2019 - Saturday

19-6525 2154 Phone - NOISE COMPLAINT LOGGED 3  
 Call Taker: SHIMMON, CHAD  
 Location/Address: [HOU] 263 LONG POND RD  
 Calling Party: SEGALL, SUSAN  
 ID:  
 Disp-21:58:34 Arvd-22:25:37 Clrd-22:51:44  
 Narrative: SHIMMON, CHAD  
 ABOVE CALLS TO REPORT THAT THE RESIDENCE OF 250 LONG POND RD  
 HAVE MUSIC PLAYING WHICH IS DISTURBING THE CALLER WHO IS AT  
 263 LONG POND RD CALLER ASKS EITHER THEY TURN DOWN MUSIC OR  
 TURN THE SPEAKERS TO POINT AWAY FROM CALLER.  
 Narrative: SHIMMON, CHAD  
 28 REPORTS A WEDDING GOING ON AT THIS LOCATION THEY WERE  
 ASKED TO TURN THE MUSIC DOWN WHICH THEY DID AND 28 IS CLEAR  
 AT THIS TIME.

For Date: 07/05/2019 - Friday

19-6714 1757 Alarm - ALARM - FIRE FIRE DEPT. DISPATCHED 1  
 Call Taker: SHIMMON, CHAD  
 Location/Address: [HOU] 250 LONG POND RD  
 Calling Party: AAA SECURITY  
 ID:  
 Disp-17:59:53 Enrt-18:01:07 Arvd-18:07:17 Clrd-18:13:26  
 ID:  
 Disp-17:59:53 Clrd-18:00:06  
 Fire Unit: ENG5-Pumper-GB Engine 5  
 Disp-17:59:53 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: ENG4-Pumper-GB Engine 4  
 Disp-17:59:53 Enrt-18:06:19 Arvd-18:11:11 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: DC49-Command-GB Deputy Chief 49  
 Disp-17:59:53 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: DC38-Command-GB Deputy Chief 38  
 Disp-17:59:53 Arvd-18:07:34 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: CAR8-Support-GB Car 8  
 Disp-17:59:53 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: C26-Command-GB Chief 26  
 Disp-17:59:53 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: B545-Brush-GB Brush 545  
 Disp-17:59:53 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: ENG3-Pumper-GB Engine 3  
 Disp-17:59:53 Arvd-18:04:22 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: RES7-Heavy Rescue-GB Rescue 7  
 Disp-17:59:53 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Fire Unit: LAD1-Aerial-GB Ladder 1  
 Disp-17:59:53 Clrd-18:39:21  
 InQrtsUnavl-18:39:27 InSrvce-18:39:27  
 Narrative: SHIMMON, CHAD  
 ALARM CO REPORTS NUMEROUS FIRE ALARMS OFF AT 250 LONG POND  
 RD.

Selective Search From: 05/21/2016 Thru: 05/21/2021 0000 - 2359 Printed: 05/21/2021

Calling Party: \*\*\*UNKNOWN\*\*\*

Narrative: BALESTRO, KRISTOPHER

CELL CALLER WITH POOR CONNECTION CALLED TO REPORT FINDING DOG ON LONG POND RD. ACO STILL AVAILABLE AND WILL HANDLE CALL.

Narrative: BALESTRO, KRISTOPHER

ACO ADVISES DOD IS MALIMUTE. FOUND AT INTER OF CHRISTIAN HILL/DIVISION AND LONG POND. DOG BROUGHT TO BONNIE BASIS.

Narrative: BALESTRO, KRISTOPHER

OWNER OF DOG CALLED STATION. GIVEN LOCATION OF DOG. SHE WILL CALL BASIS.

For Date: 10/08/2018 - Monday

18-11281 1628 Phone - COMPLAINT LOGGED 3

Call Taker: HUERTAS, ANDRES

Location/Address: [HOU] 245 LONG POND RD

Calling Party: DODGE, DEBORAH

Narrative: HUERTAS, ANDRES

ABOVE IN STATION TO REPORT SEEING 20-30 CARS GOING IN AND OUT OF 250 LONG POND RD AROUND 0830-1230AM. SAME FEELS IT IS UNUSUAL AND WOULD LIKE TO HAVE THE AREA PATROLLED DURING THIS TIME.

For Date: 12/27/2018 - Thursday

18-14458 0000 Other - SHIFT CHANGE ROLL CALL 3

Call Taker: SHIMMON, CHAD

Location: [GRE]

Narrative: SHIMMON, CHAD

SHIFT CHANGE: CLOUDY, 28°  
ZUCCO/ 3831  
SHIMMON/ DESK  
BARTINI/ 3828

-ROLL CALL-  
FIRE DEPT ON CO CALL AT 316 LONG POND RD

For Date: 01/13/2019 - Sunday

19-437 2121 911 - 911 HANG UP LOGGED 1

Call Taker: SHIMMON, CHAD

Location/Address: [HOU] 205 LONG POND RD

Calling Party: \*\*\*UNKNOWN\*\*\*

ID:

Disp-21:25:47

Clrd-21:48:05

Narrative: SHIMMON, CHAD

RECEIVED A HANG UP 911 CALL FROM 413-854-1569 IN THE AREA OF 205 LONG POND RD.

Narrative: SHIMMON, CHAD

31 IS CLEAR JUVENILE MISDIALED

Narrative: SHIMMON, CHAD

MALE PARTY CALLS BACK STATES THAT HIS DAUGHTER SAID 112 OR 102 INTO SURI WHICH MAKES YOUR PHONE CALL 911.

For Date: 02/22/2019 - Friday

19-1924 1506 Phone - FIRE, MUTUAL AID FIRE DEPT. DISPATCHED 1