Town of Yarmouth

Per M.G.L.: All town and school boards, committees, commissions, and authorities shall post a notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays, and legal holidays. Notice shall contain a listing of topics/agenda that the chair reasonably anticipates will be discussed at the meeting.

Notice of Meetings

Name of committee, board, etc:	**Drive In Site Utilization Committee (DISUC)**
Date of Meeting:	**Thursday, December 7, 2017**
Time:	**4:00 PM**
Place:	**Hearing Room - Yarmouth Town Hall** **1146 Route 28, South Yarmouth 02664**

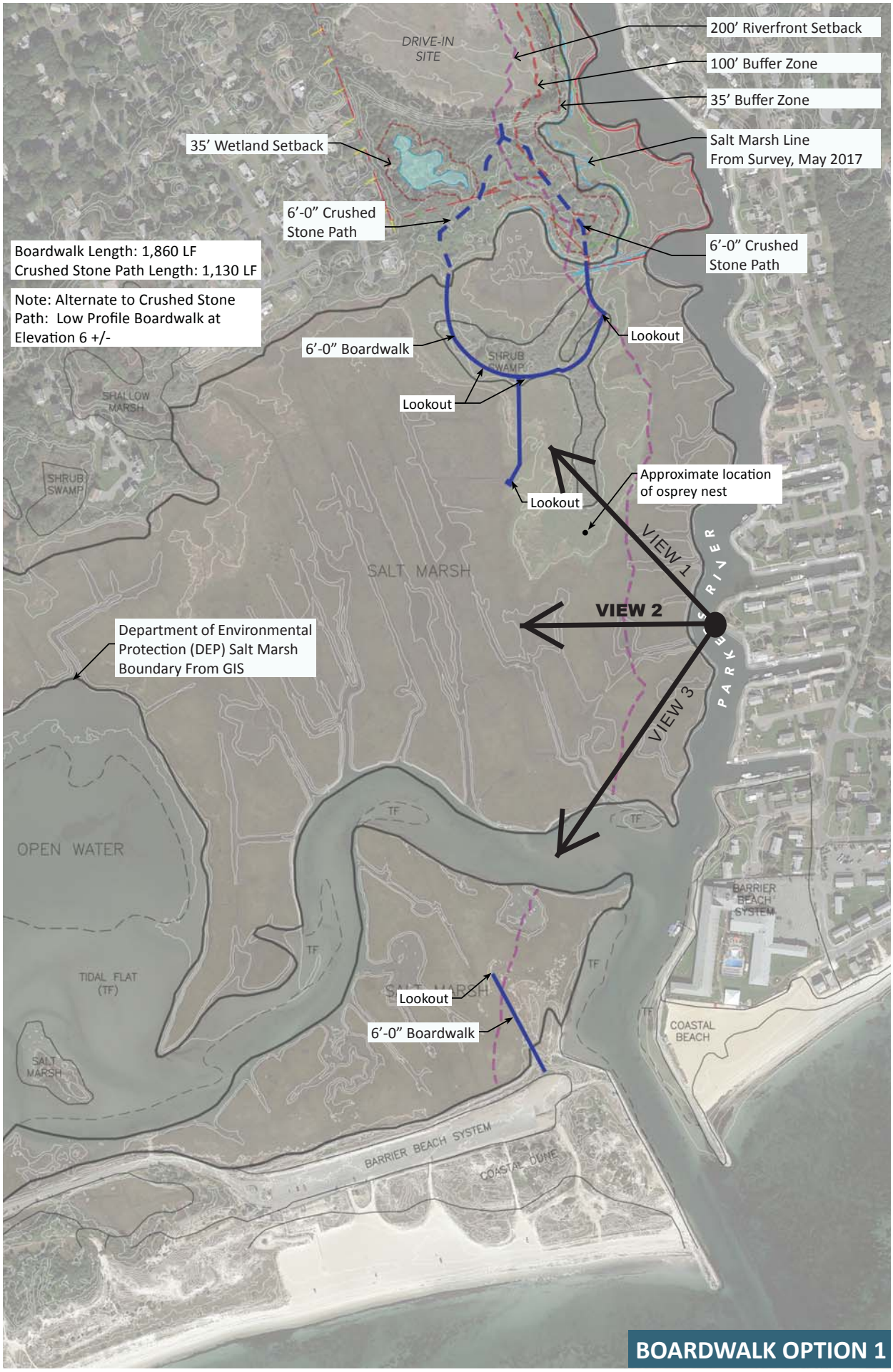
Agenda (Topics to be discussed):

1. Boardwalk
    a. Visualizations
    b. Borings
    c. Next Steps
2. General
    a. Regulatory Constraint Memo – Joe Freeman, Beta
    b. Article 97
    c. ULI-TAP Update
3. Minutes
    a. September 18, 2017
4. Upcoming meetings
    a. Interim Use
5. Adjourn

YARMOUTH TOWN CLERK
'17DEC5PM2:01 REC

Attachments: All exhibits are available for public review in the Community Development Department, Yarmouth Town Offices, 1146 Route 28, South Yarmouth, MA, during normal business hours.

Posted By (Name):	Karen Greene
Signature:	*Karen Greene*

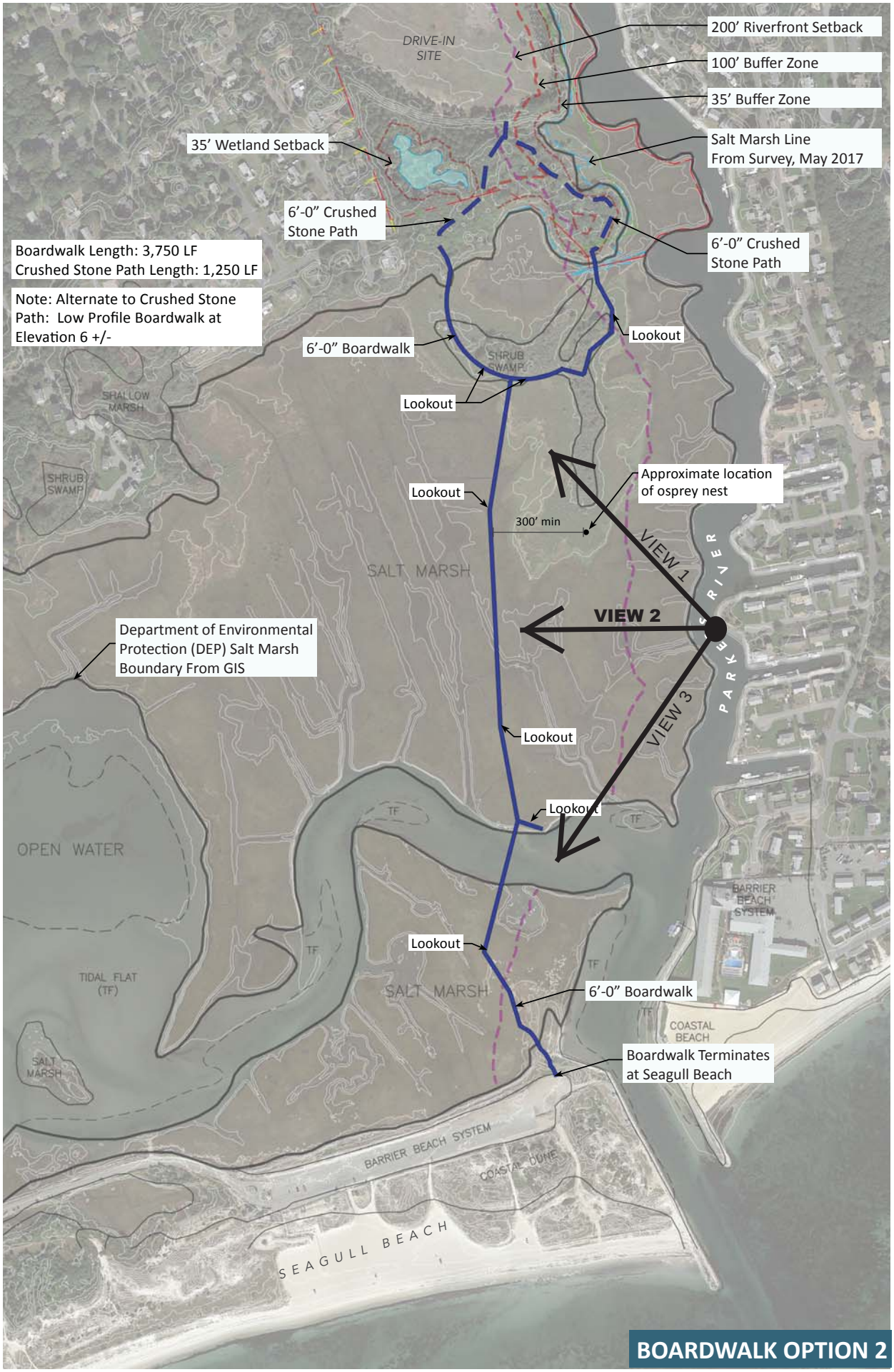


BOARDWALK OPTION 1

Riverwalk Park & Boardwalk
Yarmouth, MA
October - 2017

0 150 300 600

BETA
CELEBRATING 35 YEARS



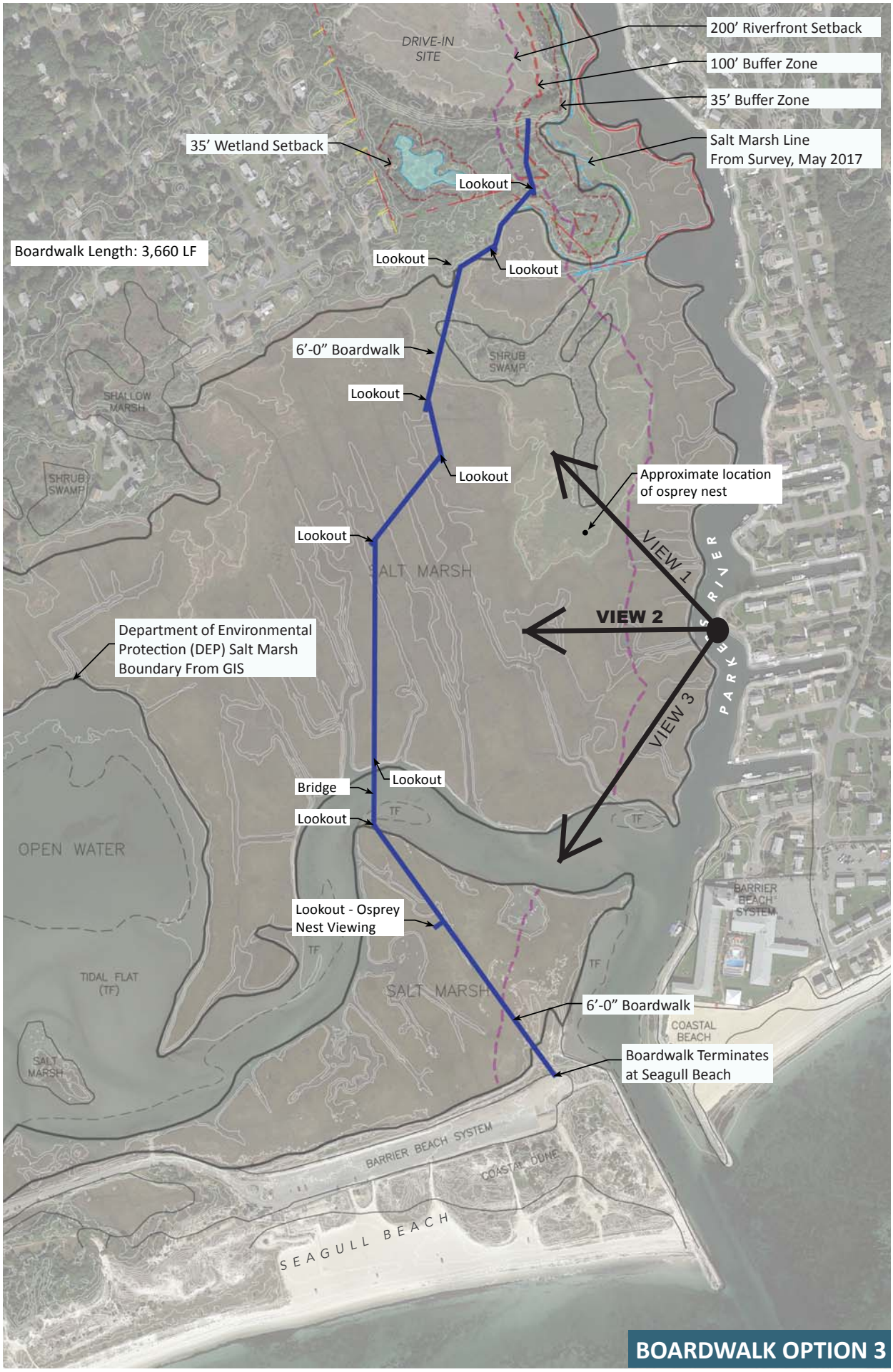
BOARDWALK OPTION 2

Riverwalk Park & Boardwalk

Yarmouth, MA October - 2017

0 150 300 600

BETA
CELEBRATING 35 YEARS



BOARDWALK OPTION 3

Riverwalk Park & Boardwalk

Yarmouth, MA October - 2017

0 150 300 600

BETA CELEBRATING 35 YEARS

Riverwalk Park & Boardwalk - *Boardwalk Visualization View 1*

Yarmouth, MA

BETA

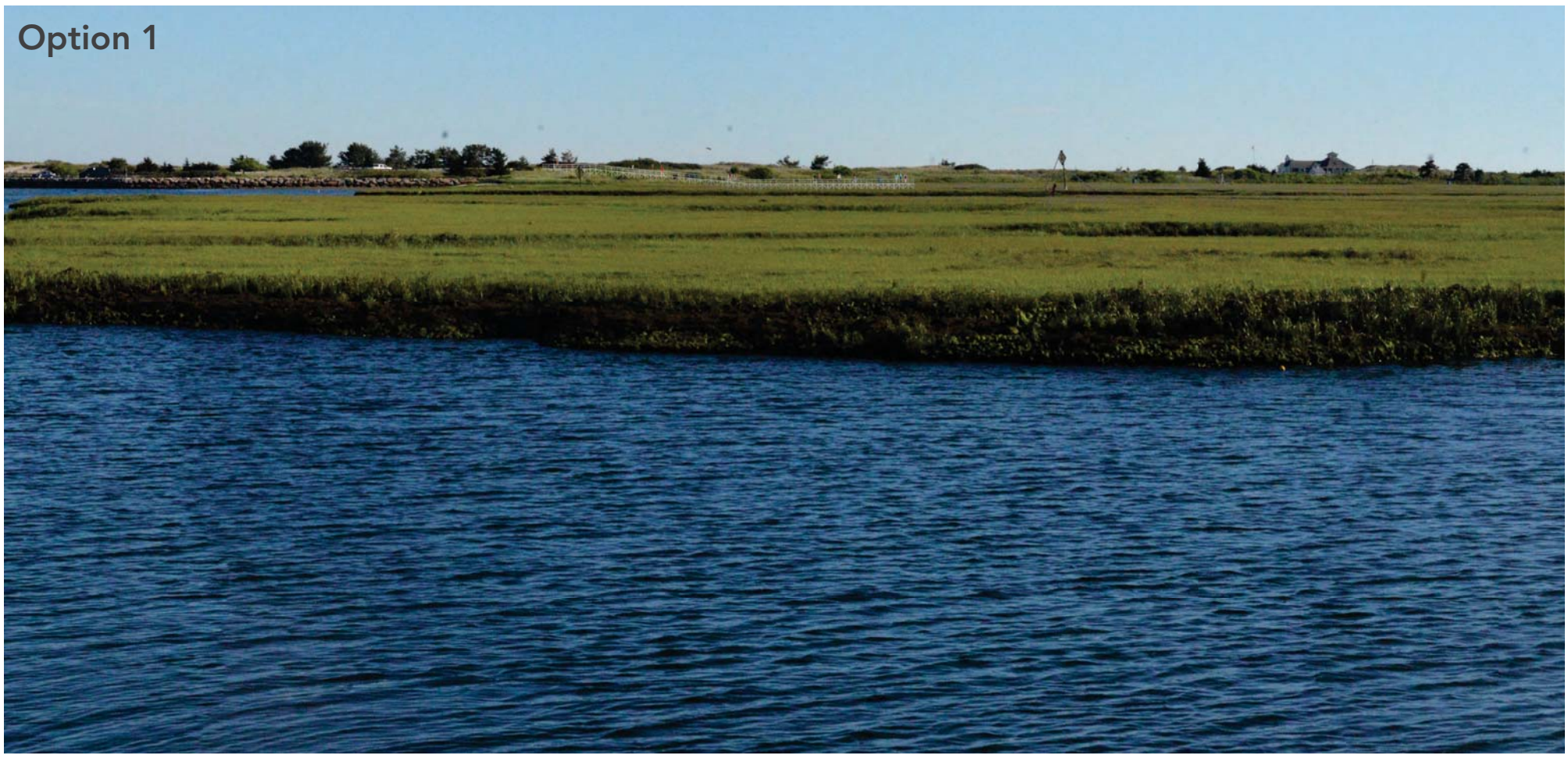
October 2017

Riverwalk Park & Boardwalk - *Boardwalk Visualization View 2*

Yarmouth, MA

BETA

October 2017



Riverwalk Park & Boardwalk - *Boardwalk Visualization View 3*

Yarmouth, MA

October 2017

MEMORANDUM

Date:	September 29, 2017	Job No.:	5562
To:	Kathy Williams, Yarmouth Town Planner		
Cc:	Kelly Carr, Associate		
From:	Joseph Freeman, Associate		
Subject:	**Yarmouth Riverwalk Park and Boardwalk – Issues, Site Constraints and Environmental/Regulated Resources**		

This memo summarizes our initial thoughts on the redevelopment of the former drive-in parcel and the construction of a boardwalk across the abutting salt marsh to the south, connecting the Riverwalk Park site to Seagull Beach on Nantucket Sound.

We have reviewed information received from the Town of Yarmouth, our field reconnaissance activities, and the updated wetland delineation and topographic survey. We have attend two (2) public meetings in Yarmouth (May 30 and June 7) with the Drive-In Site Utilization Committee at which public input on concept plans for the Riverwalk and the Boardwalk has been obtained. A listing of the information reviewed is attached to this memo.

Our conclusion is that there are no significant regulatory or site constraints that would preclude the redevelopment of the drive-in site as a Riverwalk Park and the construction of an elevated Boardwalk across the parcel to the south of the drive-in site to Seagull Beach. The several issues outlined below can be addressed through proper site, building and structure design and evaluated in the permitting process for the project.

Constraints on redevelopment of the former drive-in site are those associated with the presence of jurisdictional (under federal, state and local law) wetland resources, potential impacts to navigation in the Parkers River and the tidal creek to Lewis Pond, the flood zone designation of the property, site access from Route 28 and/or abutting residential streets to the west, potential limitations on disposal of septic effluent on site, and the presence of mapped Priority Habitat of Rare Species and Estimated Habitat of Rare Wetlands Wildlife on the site.

Jurisdictional Wetland Resources

Almost the entire drive-in site is mapped as jurisdictional wetland resources. A detailed description of the existing wetlands on the drive-in site are included in the Wetlands Resource Area Delineation letter report prepared by Wetland Strategies, Inc. (May 23, 2017). The limits of the jurisdictional wetland resources are indicated on the Existing Conditions survey plan prepared by Alpha Surveying (May 16, 2017).

The wetlands on the site are largely unchanged since the last wetlands delineation performed for the previous marina project in 2006. One exception is an area formerly delineated as Coastal Beach, located on the northeastern portion of the drive in site adjacent to the Parkers River. The recent wetlands delineation completed by Wetland Strategies, Inc. has identified this as a Coastal Dune due to changes in the vegetation in the resource area.

<u>Massachusetts Wetlands Protection Act (WPA)</u>

The drive-in site includes the following wetland resource areas under the WPA:

- Salt Marsh – bordering the site along the Parkers River;

- Coastal Dune – northeast corner of the site immediately south of the Lobster Boat Restaurant;
- Isolated Vegetated Wetlands – two areas, one located in the northern portion of the site immediately south of Route 28 and a larger area located in the southwestern portion of the site;
- Riverfront Area – extends inland 200-feet from the Mean High Water elevation of the Parkers River; and
- Land Subject to Coastal Storm Flowage – includes all areas of the site at or below the 1% Annual Chance (100-year) Floodplain elevation.
- Banks of or Land Under the Ocean, Ponds, Streams, Rivers, Lakes or Creeks that Underlie an Anadromous/Catadromous Fish Run (Fish Run) - although not identified in the wetlands delineation letter report the Parkers River is a Fish Run and the banks of the River lie within the boundaries of this resource area.

The Boardwalk parcel to the south was not surveyed and a delineation of jurisdictional wetlands was not performed. Based on Massachusetts Geographic Information Systems (MassGIS) mapping, the parcel is comprised largely of Salt Marsh with an irregularly shaped area identified as "Shrub Swamp" near the northern boundary of the Boardwalk parcel adjacent to the Riverwalk Park parcel. This area is likely to be Bordering Vegetated Wetland (BVW) under the WPA and appears to correspond to the area of densely vegetated upland within the larger area of salt marsh.

Areas of the resource area Tidal Flat are mapped within Lewis Pond and adjacent to the tidal creek into the pond from the Parkers River. Land below the Mean Low Water elevation in the tidal creek into the pond is classified as Land Under the Ocean.

Under the WPA, a 100-foot Buffer Zone extends upland from the limits of the Salt Marsh, Riverfront Area Coastal Dune, Fish Run and Tidal Flat resource areas.

Yarmouth Wetlands By-Law

The local by-law parallels the Massachusetts Wetlands Protection Act and Massachusetts Wetlands Regulations in large part with additional buffer zones and "no disturb" areas offset from the boundaries of most wetland Resource Areas. These include 50-foot and 35-foot no structure zones and a 35-foot vegetative buffer zone.

Under section 1.09(4)(c)(1) of the Yarmouth Wetland Regulations, no new non-water dependent structures are allowed within 50-feet of Coastal Dunes, Salt Marshes, Vegetated Wetlands, and Rivers (among other resource areas). Under section 1.09(4)(c)(2), "minor structures" may be allowed within 50-feet, but no closer than 35-feet, to a resource area. Section 1.09(4)(c)(3) requires that a 35-foot undisturbed vegetative buffer be maintained upland of Resource Areas.

In addition to the jurisdictional wetland resources listed above, the following additional resource areas are protected under the Yarmouth Wetlands Bylaw and the Yarmouth Wetlands Regulations.

- Land Within 300-feet of a Major Estuary (includes the Parkers River) – this Resource Area is protected under the Performance Standards for Land Subject to Coastal Storm Flowage contained at section 2.10(3) of the Yarmouth Wetlands Regulations.

Wetland constraints

In our opinion, the key wetland constraints on redevelopment of the drive-in site for the Riverwalk Park are associated with the Riverfront Area performance standards and the restrictions on location of buildings and structures imposed by the By-Law buffer zone requirements. For the construction of the Boardwalk, the key

issue is the potential impact of shading from the Boardwalk structure on the salt marsh vegetation and immediately adjacent to the structure.

Riverfront Area

Ordinarily, the Riverfront Area performance standards at 310 CMR 10.58(4)(d) include prohibitions on alteration of more than 10% of the total Riverfront Area on the lot and require that a 100-foot wide area of undisturbed vegetation from the river bank is preserved; that stormwater is managed in accordance with the Stormwater Performance Standards (although structural stormwater management measures are allowed if there is not practicable alternative location); the wildlife habitat capacity of the Riverfront Area is preserved; and groundwater or surface water quality is not impaired. A wildlife habitat evaluation in accordance with the requirements at 310 CMR 10.60 may be required by the Conservation Commission.

The concept plans for the Riverwalk Park largely respect the 100-foot undisturbed vegetative buffer with the exception of portions of walking trails and the construction of the access to the canoe/kayak dock on the Parkers River. In our experience, activities such as public access to the riverfront are generally allowed by a Conservation Commission as long as they fall within the 10% alteration threshold specified in the regulations and there is no alternative location outside of the Riverfront Area.

A more likely alternative approach under the Riverfront Area performance standards involves redevelopment of "previously developed" sites. Under this alternative approach we would clarify which areas on the Riverwalk parcel are disturbed and previously developed in consultation with the Conservation Commission. Clearly much of the site has been extensively altered from its natural state by the past use as a drive-in theater and the site could be considered as a "Previously Developed Riverfront Area" under the provisions of 310 CMR 10.58(5). The Conservation Commission "…may allow work to redevelop a previously developed riverfront area, <u>provided the proposed work improves existing conditions."</u> (emphasis added) Under this section of the performance standards, alteration of the undeveloped portions of the Riverfront Area on the drive-in site would be limited to the 10% standard while work within the degraded (previously developed) areas would be allowed beyond the 10% limitation as long as it improves existing conditions.

It is clear that there are opportunities to provide substantial areas of restoration within the Riverfront Area on the site by providing areas of native plantings within the park design. Structural stormwater management measures can likely be accommodated outside the Riverfront Area and there will be opportunity to incorporate "green design" and Low Impact Design stormwater management measures such as permeable pavement, vegetated swales and vegetated buffers into the park design which would improve the existing conditions on the site.

Salt Marsh

The usual standard for construction in or within 100 feet of a Salt Marsh is that the activity shall not destroy any portion of the marsh or have an adverse effect on the productivity of the salt marsh. However, the construction of the Boardwalk through the Salt Marsh is an allowable activity under both the Massachusetts Wetlands Regulations (310 CMR 10.32(4) and Yarmouth Wetlands Protection Regulations (section 2.06(3)(b)) as long as there are no adverse effects other than "blocking sunlight from the underlying vegetation for a portion of each day."

As noted below, the Army Corps of Engineers permit requirements require that structures located in or over tidal waters be constructed with a 1:1 height to width ratio. There is no current height to width ratio standard in the Massachusetts Wetlands Regulations or the Yarmouth Wetlands Protection Regulations which impose a similar requirement. A recent study on the shading impacts of small docks and piers on salt marsh vegetation

completed by the Massachusetts Division of Marine Fisheries Massachusetts Bay Program[1] monitored the shading impacts on salt marsh vegetation of structures at various heights and found that the structures constructed in compliance with the 1:1 ratio standard and with a deck spacing of ¾" resulted in "no detectable signs of reduced aboveground production (biomass) relative to unshaded areas." Structures monitored were on a north-south orientation (which would be the general orientation of the proposed Boardwalk) which maximized sunlight penetration under the structures. Division of Marine Fisheries environmental review program staff have recently been commenting on permit applications for structures over salt marsh and requesting that the 1:1 height to width ratio requirement be included in the permits.

We believe that the 1:1 height to width ratio requirement would be included in any Army Corps permit issued for the project and is likely to be a requirement of the wetlands Order of Conditions to be issued by the Yarmouth Conservation Commission.

The Corps' *General Permits for Massachusetts* (March 2015) requires that structures such as the proposed boardwalk which span more than 100 feet over salt marsh are not eligible for authorization as a Self-Verification activity under General Permit 3 (Pile Supported Structures, Floats and Lifts). The Corps requires a 1:1 height to width ratio for such structures over tidal waters (footnote 9, page 8).

Navigation Issues

During the two public meetings, Yarmouth residents and nearby abutters raised the issue of impacts to existing navigation within the Parkers River that may result from the addition of a public kayak/canoe launch associated with the Riverwalk Park. The river is relatively narrow at this point and the speakers repeatedly raised the issue of interference from the kayak/canoe launch, particularly during low tide.

Impacts on navigation in the Parkers River and the tidal creek to Lewis Pond will be evaluated under Massachusetts General Laws, Chapter 91, the Public Waterways Act (Chapter 91), the Massachusetts Waterways Regulations (310 CMR 9.00) and the Army Corps of Engineers permit program.

Under the Army Corps permit program piers, docks and similar structures are not allowed to encroach on federal navigation projects (navigation channels) or extend beyond designated harbor lines. The Parkers River is not a federal navigation project and there are no designated federal harbor lines in the river.

The Corps has published guidelines for placement of structures in navigable waters.[2] In relevant part, the guidelines require that structures in "linear waterways" a "reasonable use of public water should be maintained" and those structures should not extend "more than 25% of the waterway width at mean low water."

Under Chapter 91, navigation issues are addressed through the licensing process and standards are established within the Waterways Regulations at 310 CMR 9.35: Standards to Preserve Water-Related Public Rights. Under the regulations, a project may not "significantly interfere with public rights of navigation." DEP will not issue a license for any project which: extends beyond any <u>state</u> harbor line; which extends into or beyond any existing channel such as to impede free passage; impairs any line of sight required for navigation; requires alteration of established course for vessels; extends beyond the length necessary to achieve safe berthing; would generate water-borne traffic that would "substantially interfere with other water-borne

---

[1] Massachusetts Bays Program, Draft Final Report, *"Shading Impacts of Small Docks and Piers on Salt Marsh Vegetation in Massachusetts Estuaries,"* January 2014

[2] *Guidelines for the placement of fixed and floating structures in navigable waters of the United States by the Regulatory Program of the New England District, Army Corps of Engineers*, July 1996

traffic in the area at present, or in the future;" or impair the ability of the public to pass freely upon the waterways.

There are no state navigation channels in the Parkers River and there are no designated state harbor lines in the river. In our opinion, the publicly perceived constraint in the width of the river at low tide which is available for safe navigation of all vessels will be a key issue in the Chapter 91 licensing process for the Riverwalk Park. The opinion of the Yarmouth Harbormaster and the Department of Natural Resources will be important in demonstrating to DEP the likely implications of a kayak/canoe launch with respect to navigation in the Parkers River.

Another navigation issue is the construction of the boardwalk across the tidal creek to Lewis Pond and the height of that structure above the Mean High Water elevation. Our understanding is that navigation in the tidal creek between the pond and the river is limited by the shallow depths and that small craft are the only vessels that routinely navigate the tidal creek, particularly at higher tidal conditions. A single dock is located on the western shore of the pond at the end of Lacker Road. In our opinion, DEP would likely defer to the opinion of the harbormaster as to the controlling height of the vessels which navigate the tidal creek and would require that the height of the structure to accommodate that height. We believe that the Army Corps of Engineers would defer to the requirements imposed in the state permitting process as there is no federal navigation project in the tidal creek. We do not foresee any significant issue in permitting the boardwalk crossing of the tidal creek as long as the structure does not interfere with existing navigation.

Flood Zone – FEMA Special Flood Hazard Areas

The entire Riverwalk Park and Boardwalk sites are located within the 1% Annual Chance (100-year) Floodplain as mapped by the latest Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map[3] for the area. The drive-in site is located within an AE Zone with a Base Flood Elevation (BFE) of 13 feet, North American Vertical Datum of 1988 (NAVD88). The Boardwalk parcel is located within an AE Zone with a BFE of 12 feet NAVD88. AE Zones are described by FEMA as areas where the flood elevation includes wave heights of less than 3 feet. Both the Riverwalk Park and Boardwalk parcels are mapped as within an area known as the Limit of Moderate Wave Action (LiMWA). According to FEMA the inland limit of the LiMWA zone is where 1.5 foot or greater breaking waves may be expected during the 1% Annual Chance flood event.

In addition, the majority of the Boardwalk parcel is located within a mapped Coastal Barrier Resource System area. Within these areas flood insurance for new structures is not available.

Construction of new buildings within the flood plain are controlled by the requirements of the Massachusetts Building Code, particularly 780 CMR 120.G.501 (Flood Hazard Zones). All new buildings constructed on the site must be elevated such that the "lowest floor is located at or above" the BFE. Any enclosed building spaces below the BFE cannot be used for human habitation and must be designed to equalize automatically the hydrostatic forces of flood events by allowing for the entry and exit of floodwaters. Structures must be designed such that they are anchored to resist flotation, collapse or lateral movement during flooding.

Implications for development of the Riverfront Park and Boardwalk are limited with respect to the flood zone designations. Any building structures can be designed to meet the requirements of the Building Code with respect to elevation above the BFE although these structures would be noticeably elevated above the

[3] Flood Insurance Rate Map panel 25001C0588J, July 16, 2014

surrounding ground, site elevations range from 4 feet to 9 feet over much of the developable portion of the Riverwalk Park site. The concept plans for the Riverwalk Park include only limited structures including a welcome center, public toilets and potential artist shanties.

The Riverwalk Park concept plans envision composting toilets as an option for the public toilets on the site. The composting toilets are an accepted method and have recently been installed in several coastal waterfront public parks in New England including Cranes Beach in Salisbury, Horseneck Beach in Dartmouth, Misquamicut Beach in Westerly, RI and Spectacle Island in Boston Harbor.[4]

Use of the composting toilets would minimize water use on the site, eliminate additional nitrogen loading into the groundwater at the site, and provide grey water for irrigation of park plantings.

Site Access

The issues associated with site access are related to the location along heavily travelled Route 28, the limited frontage, and constrained right-of-way width along Route 28 in the area of the drive-in parcel.

Route 28 is maintained by the Massachusetts Department of Transportation as a principal arterial highway with two travel lanes and limited shoulder width. Sidewalks are located along both sides of the roadway at the site entrance. Access to the drive-in parcel will require an Access Permit from MassDOT under the provisions of 720 CMR 13.00 (Approval of Access to State Highways). The specific form of access permit (Minor or Major) is dependent on the intensity of the final Riverwalk Park concept and is tied to the transportation thresholds of the Massachusetts Environmental Policy Act (MEPA) Regulations at 301 CMR 11.03(6).

Options for location of the site access drive are limited and we anticipate that MassDOT would require that the access drive be aligned with one of the access drives into the parking lot of Captain Parker's Pub on the north side of Route 28. The area available on the drive-in parcel frontage will allow for the construction of a three lane cross section on the access drive, allowing for a separate left turn exit lane and a through/right turn lane. Given the existing heavy seasonal traffic volumes on Route 28 this layout would result in the most efficient operating conditions for vehicles exiting the Riverwalk Park.

Options for construction of a left turn "pocket" on Route 28 to accommodate vehicles turning into the park parcel are limited by the narrow width of the Route 28 right-of-way, the proximity of abutting businesses and existing driveways and would need to be explored in detail during final design of the Riverwalk Park and the MassDOT access permit process.

Rare Species

Areas of the site are mapped as Estimated Habitat of Rare Wetlands Wildlife (EH 756) and Priority Habitats of Rare Species (PH 945) on the site. The Natural Heritage and Endangered Species Program (NHESP) recently revised the Estimated Habitat and Rare Species Habitat mapping (effective August 2017). The boundaries of the two mapped habitat areas encompass the entire salt marsh (boardwalk) parcel, overlap and extend well into Nantucket Sound both east and west from the site. It is not clear whether the mapped habitat areas extend into the drive-in parcel, this would need to be determined during the design phase of

[4] http://www.clivusne.com

the project and would likely be based on the presence of specific vegetation or other habitat characteristics specific to the species associated with the habitat.

Potential impacts to the Estimated Habitat of Rare Wetlands Wildlife are addressed through the Wetlands Protection Act permitting process with the Conservation Commission with a copy of the Notice of Intent application provided to the NHEPS at the time of the filing. Briefly, the standard is that the project not adversely affect the habitat and/or habitat value of the site as specified in various performance standards associated with particular jurisdictional wetland resource areas.

Impacts to the Priority Habitat of Rare Species are addressed through a filing with the NHESP under the Massachusetts Endangered Species Act (MESA). Briefly, NHESP reviews the project and determines if it would result in a "take" of the rare species associated with the mapped habitat area. If it is determined that a take would result, an additional MESA permit would be required and potential mitigation for the take would be negotiated with NHESP. Typically, NHESP focuses on impacts relative to the amount of land clearing and changes to native vegetation in making their determination.

In the case of the proposed boardwalk, the footprint of the proposed boardwalk represents an extremely small percentage of total size of the mapped habitat area and would be unlikely to result in a "take" of the rare species. Additionally, the potential to include restoration of native vegetation in the design of the park could further mitigate any negligible impacts to the mapped habitat by providing additional suitable habitat and should be explored further in the design phase of the park.

List of Material Reviewed

1. Federal Emergency Management Agency, National Flood Insurance Program, Flood Insurance Rate Map panel 25001C0588J, July 16, 2014

2. http://www.clivusne.com, accessed June 30, 2017

3. Massachusetts Bays Program, Draft Final Report, *"Shading Impacts of Small Docks and Piers on Salt Marsh Vegetation in Massachusetts Estuaries,"* January 2014

4. Massachusetts Wetlands Regulations, 310 Code of Massachusetts Regulations 10.00, October 24, 2014

5. Massachusetts Waterways Regulations, 310 Code of Massachusetts Regulations 9.00, May 23, 2014

6. Massachusetts Building Code, 780 Code of Massachusetts Regulations 120.G, Flood-Resistant Construction and Construction in Coastal Dunes, August 2008

7. Tetra Tech, Inc., *Expanded Environmental Notification Form*, *Parkers River Marine Park, West Yarmouth, Massachusetts*, October 2006

8. Town of Yarmouth By-Laws, Chapter 143, Wetlands, October 14, 2016

9. Town of Yarmouth, Conservation Commission, Wetland Regulations, December, 2016

10. United States Army Corps of Engineers, New England Division, General Permits for Massachusetts, March 2015

11. United States Army Corps of Engineers, New England Division, "*Guidelines for the placement of fixed and floating structures in navigable waters of the United States by the Regulatory Program of the New England District*," July 1996

12. http://maps.massgis.state.ma.us/map_ol/oliver.php; MassGIS Data - NHESP Priority Habitats of Rare Species Datalayer, effective August 1, 2017, viewed 8/29/17

13. http://maps.massgis.state.ma.us/map_ol/oliver.php; MassGIS Data - NHESP Estimated Habitats of Rare Wildlife, effective August 1, 2017, viewed 8/29/17

TOWN OF YARMOUTH

1146 ROUTE 28, SOUTH YARMOUTH, MASSACHUSETTS 02664-4492
Telephone (508) 398-2231, Ext. 1277, Fax (508) 398-2365

Department of Community Development

To: Drive In Site Utilization Committee

CC: Yarmouth Board of Selectmen
Jay Talerman, Town Counsel
Kate Feodoroff, Town Counsel

From: Karen M. Greene, Director of Community Development KMG

Date: December 5, 2017

Re: Drive-In Site – Article 97

To help inform the Drive-In Site Utilization Committee regarding the short- and long-term utilization of the former Drive-In property, staff sought the opinion of Town Counsel regarding the applicability of Article 97 to the Drive-In Site. Adopted in 1972, Article 97 provides protection for properties taken pursuant to conservation goals, and states that "Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court." Article 97 protections may also apply to parklands and recreational properties.

The Drive-In Site was acquired through Article 9 of the December 11, 1985 Special Town Meeting. While the text of Article 9 authorized "...the Board of Selectmen to acquire by purchase, gift, or take by eminent domain for recreation purposes and/or conservation purposes under Massachusetts General Laws, Chapter 40, section 8C…" the Order of Taking for the property is solely for recreational purposes. (Please note that as the Taking was for recreation (and not conservation), the provisions of Massachusetts General Laws, Chapter 40, section 8C do not apply to the Drive-In Site).

Based on their review of the Town's taking of the property, Town Counsel has taken a conservative view and opined that the provisions of Article 97 apply to the site. As such, unless legislative approval is sought, the property may be developed only for the purpose for which it was originally taken (Recreation). Recreational purposes include, but are not limited to a park with walking paths, playgrounds, athletic fields, etc. Other, related uses such as festivals, concerts, special events, refreshment stands, etc are also permitted, as long as they are ancillary to the primary recreational use of the site. Site improvements to accommodate recreational uses would also be allowed such as parking and restrooms.

Town Counsel has also noted that Article 97 disposition procedures would be required to allow for any transfer or conveyance of ownership or other interests, and for changes in physical or legal control. Since a lease would convey exclusive interest in real property, leasing the property would require legislative approval. However, license to utilize the property from time to time is permitted, as long as the licensed use is consistent with recreation.

Should the Town wish to develop the site for a use **other** than Recreation or to lease or sell the property, the Town would be required to follow the prescribed legislative process under Article 97. This process requires local approvals and a two-thirds vote of approval from the Massachusetts Legislature (House and Senate). In addition, as part of this process, Counsel recommends seeking the approval from the Executive Office of Environmental Affairs which requires a unanimous vote from the Conservation Commission and a two-thirds vote from Town Meeting supporting the disposition.

For your information, the Town Meeting Article 9 (from the December 11, 1985 meeting) and the subsequent Order of Taking are attached as is the formal Town Counsel Opinion and follow-up email regarding this matter.

Attachments:

- 9/14/17 Town Counsel Opinion
- 10/5/17 Email from K. Feodoroff
- Article 9 – December 11, 1985 Special Town Meeting
- Order of Taking

Mead, Talerman & Costa, LLC
Attorneys at Law

730 Main Street
Suite 1F
Millis, MA 02054
Phone 508.376.8400

www.mtclawyers.com

TO: DAN KNAPNIK, TOWN ADMINISTRATOR

FROM: KATE FEODOROFF, TOWN COUNSEL
JAY TALERMAN, TOWN COUNSEL

RE: DEVELOPMENT OF PROPERTY ALONG PARKER'S RIVER

DATE: SEPTEMBER 14, 2017

INTRODUCTION

Please accept this opinion as to the permissible development possibilities for the property along Parker's River, in light of the title constraints associated therewith. For the reasons more fully set forth below, it is recommended that the Town follow the procedures required for the disposition of Article 97 property if it intends on using the property for any use other than a use qualifying as a recreational use.

APPLICATION OF ARTICLE 97

Generally, Art. XCVII. Article XLIX of the Amendments to the Massachusetts Constitution ("art. 97") provides protection for properties taken pursuant to its conservation goals. Art. 97 states in pertinent part:

> The people shall have the right to clean air water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.
>
> ...
>
> In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.
>
> Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a tow thirds vote, taken by yeas and nays, of each branch of the general court.

The first issue concerns whether the project site was "taken" for art. 97 purposes. *Mahajan v. Dept. of Envtl. Protec.*, 984 N.E.2d 821, 827 (Mass. 2013) and see *Selectmen of Hanson v. Lindsay*, 444 Mass. 502, 504–506, 829 N.E.2d 1105 (2005) (in order for art. 97 vote requirement to apply, land must have been taken

Newburyport Office
30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

or acquired for art. 97 purposes). The critical question to be answered is not whether the use of the land incidentally serves purposes consistent with art. 97, or whether the land displays some attributes of art. 97 land, but whether the land was taken for those purposes, or subsequent to the taking was designated for those purposes in a manner sufficient to invoke the protection of art. 97. *See Selectmen of Hanson v. Lindsay*, 444 Mass. 502, 508–509 (2005) (art. 97 protections may arise where subsequent to taking for purposes other than art. 97, land is "specifically designated" for art. 97 purpose by deed or other recorded restriction); *see also Toro v. Mayor of Revere*, 9 Mass. App. Ct. 871, 872 (1980) (applicability of art. 97 hinged on whether land had in fact been conveyed "to the conservation commission ... to maintain and preserve it for the use of the public for conservation purposes").

The scope of Article 97, which was broadly interpreted by the 1973 determination known as the "Quinn Opinion," was ratcheted back in 2013 by *Mahajan v. Dept. of Envtl. Protec.*, 464 Mass. 604, 613-614 (Mass. 2013). In rejecting the broad reading of Quinn, the Court stated:

> The Quinn Opinion suggests a more expansive reading of art. 97 than we afford it today, and it may reasonably be read to support the plaintiffs' argument that the project site is subject to art. 97. We disagree with the Quinn Opinion to the extent it suggests that the vast majority of land taken for any public purpose may become subject to art. 97 if the taking or use even incidentally promotes the "conservation, development and utilization of the ... forest, water and air," or that the land simply displays some attributes of art. 97 land generally. We also do not agree that the relatively imprecise language of art. 97 warrants an interpretation as broad as the Quinn Opinion would afford it, particularly in light of the practical consequences that would result from such an expansive application, as well as the ability of a narrower interpretation to serve adequately the stated goals of art. 97.

Id. (internal citations omitted). In *Mahajan*, the property in question was taken for "urban renewal," which although as a practical matter "may accomplish goals similar to those outlined in art. 97," was found not to be bound by art. 97 as the "overarching" purpose was distinct from art. 97. Now, pursuant to *Mahajan*, no longer is "the vast majority of land taken for any public purpose… subject to art. 97 if the taking or use… incidentally promotes the 'conservation, development and utilization of the … forest, water and air.'" *Id.* Nevertheless, based upon our experience, the Commonwealth still takes a very broad view of the protections of Article 97, which is understandable given the over-arching purpose of protecting open spaces.

Cases on the applicability of art. 97 to land taken for "recreational" uses are virtually nonexistent. We can attempt to inform ourselves of a possible judicial reaction by looking at extraneous language in *Mahajan* which says: "In this case, while it can be argued that the project site displays some of the attributes of a park and serves the purpose of the utilization of natural resources—in that it promotes access to the waterfront and the sea—this specific use is incidental to the overarching purpose of urban renewal for which the land including the project site was originally taken." This dictum suggests that the "conservation" may mean access to waterfront, certainly something contemplated by the taking.

In *Nickolas v. City of Marlborough*, MICV2013-05608, 2014 WL 2465281, at *1 (Mass. Super. May 9, 2014), property which was taken "for the purpose of a public play ground or recreation center," citing G.L. c. 45, §14, the Court found art. 97 restrictions to be inapplicable because of the divergent purposes in the taking despite the finding that playground purposes would be covered by art. 97. In that case, the Court stated:

> The City took this land for a mix of uses, some of them within the scope of art. 97 and some not. The Court assumes that purely playground uses are within the purposes protected by art. 97 but agrees with Plaintiffs that construction of a 22,000 square foot building for use as a senior center or other kind of recreation center within the meaning of G.L. c. 45, § 14, is not. Since Ward Park was taken for this entire range of public purposes, and was not devoted solely to playground uses, it is not subject to art. 97 as a matter of law. *See Mahajan*, 464 Mass. at 617–619 (since Lewis Wharf in Boston was taken for a range of urban renewal purposes, only some of which "are consistent with art. 97 purposes," the property was not subject to art. 97).

Id. at *6. However, in *Curley v. Town of Billerica*, 2013 WL 4029208 (Land Ct. 2013), the Court found that playgrounds are not covered under art. 97, as the language of that article applies only to "public open space that, for the most part, remains open and unimproved." Id. at 87.

Suffice it to say, there is absolutely no clear agreement among courts as to the applicability of "recreational" uses to art. 97. Nevertheless, there are some guideposts that enable us to offer an opinion which is necessarily conservative, given the strength of Article 97 protection.

Here, the property was taken by the Town through eminent domain in 1986. The Town Meeting authorization and the transcript of the Town Meeting all indicate that the property was to be dedicated to "recreational purposes." However, it should be noted that the transcript reveals that the Town contemplated from the outset, the possibility of developing the property as a marina. Based on the status of the property and the present interpretations of Article 97, the conservative recommendation is twofold: (1) that the property may be developed consistent with its original purpose as a municipal marina or for some other recreational purpose[1] without legislative approval; (2) that legislative approval, as described in greater detail below, should be sought if the property were to be developed for any purpose other than a "recreational" use or marina.

CHANGE IN USE

Certain procedural requirements must be followed where there is a disposition of Article 97 land. An art. 97 land disposition is defined as a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to art. 97 land or interests in art. 97 land owned or held by political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change.

Again, if the Town changes the current use to a new use consistent with the original taking, i.e. a recreational use, then no additional procedural requirements need to be followed. However, if the Town wishes to use the property for purposes other than recreation, even if it is a covered art. 97 purpose, the Town must follow the procedure for a disposition. If the town wishes to pursue another type of development, it must obtain approval of the Legislature by two-thirds votes of both the House and the Senate. Additionally, it is recommended to

[1] Recreational purposes can include: park with walking paths, playgrounds, fields, etc....

proceed with approval from the Executive Office of Environmental Affairs, which imposes additional measures.[2]

ALTERNATIVE

The aforementioned approach is certainly conservative, though deferential to the strength afforded Article 97 properties. However, in light of the fact that there is no direct guidance as to the applicability of Article 97 to properties restricted to recreational uses, the Town could take the position that the property is not subject to Article 97 by asserting that the conservation elements resulting from the recreational use of the property are merely incidental.

If the Town follows this approach, a legal challenge may result. If unsuccessful, the ramifications are that the Town shall not be eligible for grants offered by Energy and Environmental Affairs or its agencies until the municipality has complied with this policy. And a legal action may result in injunctive relief or other equitable remedies.

[2] EOEA requires the municipality to: (a) obtain a unanimous vote of the municipal Conservation Commission that the Article 97 land is surplus to municipal, conservation and open space needs; (b) obtain a two-thirds Town Meeting vote in support of the disposition; (c) obtain two-thirds vote of the legislature in support of the disposition, as required under the state constitution; (d) comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund, and any other applicable funding sources; and (e) comply with EOEA Article 97 Land Disposition Policy [note: the municipality must also file an Environmental Notification Form with EOEA's MEPA office].

Williams, Kathleen

From: Kate Feodoroff <kate@mtclawyers.com>
Sent: Thursday, October 05, 2017 11:11 AM
To: Williams, Kathleen
Cc: Greene, Karen; Knapik, Daniel; Jay Talerman
Subject: Article 97

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Kathy:

Jay had forwarded me your question whether a lease would trigger the disposition requirements for property protected through Article 97. The answer is yes for the reasons below.

An Article 97 land disposition is defined as: a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

Although Mahajan v. Dept. of Envtl. Protec., 984 N.E.2d 821, 834 (Mass. 2013) deals with a license, it acknowledges in dicta that a lease would trigger the article 97 disposition process. Further, the Land Court concurs that a lease would trigger the disposition policy, stating: "The Lease is a disposition of municipal real estate that triggers the requirements of G.L. c. 40, § 15A, and could potentially trigger the two-thirds vote requirement of art. 97. See Wright v. Walcott, 238 Mass. 432 438 (1921) (conveyance of lesser estate than full sale can be made by municipality). A lease, at least one entered into by a municipality, is an encumbrance on title that involves a right, title or interest in land sufficient to invoke the Land Court's subject matter jurisdiction. Lepore v. City of Lynn, 13 LCR 237, 239 (2005). The question of whether the Town was required to comply with the dictates of art. 97 before it could validly enter into the Lease is one over which this court has subject matter jurisdiction." Curley v. Town of Billerica, 12 MISC 459001 RBF, 2013 WL 4029208, at *4 (Mass. Land Ct. Aug. 8, 2013) (negative treatment for other reasons Nickolas v. City of Marlborough, MICV2013-05608, 2014 WL 2465281, at *5 (Mass. Super. May 9, 2014), judgment entered, (Mass. Super. May 12, 2014).

So a lease would trigger Article 97.

I hope this helps.
Kate

Katherine M. Feodoroff
Mead, Talerman & Costa, LLC
730 Main Street · Suite 1F · Millis, Massachusetts · 02054
Phone 774.993.5002
kate@mtclawyers.com · www.mtclawyers.com

The information contained herein is confidential and may be protected by the attorney-client and/or other applicable privilege(s). It is intended only for the named recipient(s). If you are neither an intended recipient nor a person responsible for delivery to a recipient, you are hereby notified that any unauthorized use, dissemination, distribution or reproduction of the contents hereof is strictly prohibited and may be unlawful.

If you have received the above transmittal in error, please delete the message and any attachment(s) hereto from your e-mail system and notify us immediately.

TOWN OF YARMOUTH

OFFICE OF THE TOWN CLERK AND TREASURER

1146 ROUTE 28, SOUTH YARMOUTH, MASS. 02664

KATHLEEN D. JOHNSON, C.M.C./C.M.M.T.

SPECIAL TOWN MEETING MATTACHEESE MIDDLE SCHOOL DECEMBER 11, 1985

ARTICLE 9:

To see if the Town will vote to authorize the Board of Selectmen to acquire by purchase, gift, or take by eminent domain for recreational purposes and/or conservation purposes under Massachusetts General Laws, Chapter 40, section 8C, those parcels of land as shown on a plan titled "Sketch Plan of Land in West Yarmouth, Ma., for the Town of Yarmouth, Ma., dated November 15, 1985, Yarmouth Engineering Department", and to appropriate a sum of money for such acquisition and development of said parcel and determine whether such sum shall be raised by taxation, transferred from available funds, or borrowed under Chapter 44 of the Massachusetts General Laws.

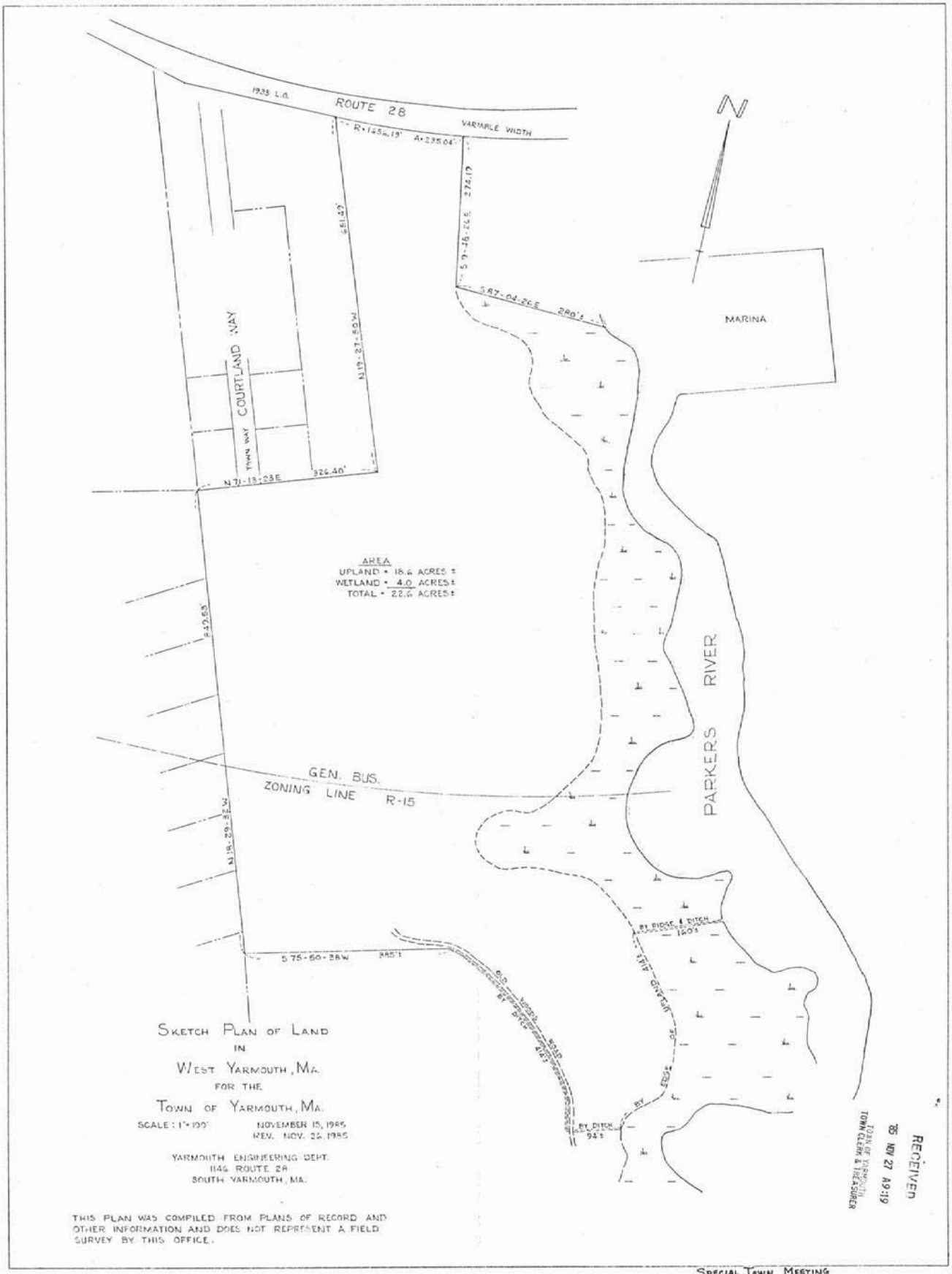
2/3rds vote (Board of Selectmen)

Acting on Article 9.

On motion made by Robert W. Saben, Jr. and duly seconded and recommended by the Finance Committee, Selectmen, Water Quality Commission, Conservation Commission, and Water Commissioners to move that the town vote to authorize the Board of Selectmen to take by eminent domain for recreational purposes and/or conservation purposes under Massachusetts General Laws Chaper 40, Section 8C, those parcels of land as shown on a plan titled"Sketch Plan Of Land In West Yarmouth, MA. For The Town Of Yarmouth Dated November 15, 1985 Revised November 26, 1985 Yarmouth Engineering Department"; and to transfer from available funds the sum of $25,000.00 and to authorize the Treasurer with the approval of the Board of Selectmen to borrow the sum of one million eight hundred thousand dollars ($1,800,000.00) under General Law Chapter 44, Section 7 for such acquisition and development of said parcel.

The vote was unanimous.
10:04 P.M.

Article 8 was reconsidered at this time.



SKETCH PLAN OF LAND
IN
WEST YARMOUTH, MA.
FOR THE
TOWN OF YARMOUTH, MA.

SCALE: 1" = 100' NOVEMBER 15, 1985
REV. NOV. 22, 1985

YARMOUTH ENGINEERING DEPT.
1146 ROUTE 28
SOUTH YARMOUTH, MA.

THIS PLAN WAS COMPILED FROM PLANS OF RECORD AND OTHER INFORMATION AND DOES NOT REPRESENT A FIELD SURVEY BY THIS OFFICE.

RECEIVED
'85 NOV 27 A9:19
TOWN OF YARMOUTH
TOWN CLERK & TREASURER

SPECIAL TOWN MEETING
12/11/85 ARTICLE 9

FORMER DRIVE-IN

18537

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Office of the Board of Selectmen of the Town of Yarmouth

ORDER OF TAKING BY EMINENT DOMAIN OF LAND IN YARMOUTH, BARNSTABLE COUNTY, MASSACHUSETTS FOR RECREATIONAL PURPOSES

WE, JOEL M. WOLFSON, MATTHEW J. STEELE, ROBERT W. SABEN, JR. DOUGLAS J. ANTOON and RICHARD K. JOHNSON, being the members of the duly elected and qualified Board of Selectmen of the Town of Yarmouth, a municipal corporation located in Barnstable County, Massachusetts acting by authority of the vote taken under Article 9 of the Warrant for the Special Town Meeting of the Town of Yarmouth held on December 11, 1985 and acting by virtue of the authority granted to us under Chapter 79 of the General Laws and acts and amendments thereof and in addition thereto, having complied with all of the preliminary requirements prescribed by law, do hereby ADOPT and DECREE this order of taking and do hereby TAKE by eminent domain as above set forth on behalf of the Town of Yarmouth, the fee simple interest, for recreational purposes, in the land in Yarmouth, Barnstable County, Massachusetts, bounded and described as follows:

NORTHERLY	by State Highway Route 28 as shown on hereinafter mentioned plan, five hundred seventy-eight and 30/100(578.30) feet;
EASTERLY	by land formerly of the heirs of Joyce Taylor as shown on said plan, two hundred eighty-three and 98/100 (283.98) feet;
NORTHERLY	by land of said Taylor, three hundred twenty-three feet more or less;
EASTERLY	by Parkers River as shown on said plan, three hundred sixty feet more or less;
SOUTHERLY	by land of John Sears as shown on said plan, one hundred eighty-seven feet more or less;

JOHN C. CRENEY, P.C.
ATTORNEY-AT-LAW
17 EAST MAIN STREET
HYANNIS, MASSACHUSETTS
02601
617 771 0049

J/3/11

EASTERLY	by the edge of upland as shown on said plan, four hundred fifteen feet more or less;
SOUTHERLY	by a ditch as shown on said plan, ninety-four feet more or less;
SOUTHWESTERLY	by a ditch as shown on said plan, four hundred fourteen feet more or less;
SOUTHERLY	by land formerly of Hurst, three hundred eighty-four and 82/100 (384.82) feet;
WESTERLY	by land of Keystone Development Co., as shown on said plan, sixteen hundred twenty-five and 56/100 (1,625.56) feet.

Containing according to said plan 28.7± acres and being shown on plan entitled "Plan of Land in South Yarmouth, Mass. Conveyed by John E. Hinckley to John E. & Kezia C. Burfeind Scale 1" = 100' Jan. 1929 G.F. Clements Civil Eng. Hyannis and Bridgewater" recorded with Barnstable County Registry of Deeds in Plan Book 50 Page 59.

EXCEPTING AND EXCLUDING THEREFROM so much of the above described parcel as is contained within the perimeter of land shown on plan entitled "Plan of Land in West Yarmouth, Mass. Property of Geo. V. Paynter Scale 1" = 40' Date May 1949" recorded with Barnstable County Registry of Deeds in Plan Book 87 Page 133.

Subject to an order of taking made by the Commonwealth of Massachusetts Department of Public Works for the layout of State Highway Route 28 dated January 10, 1933 and recorded with Barnstable County Registry of Deeds in Book 492 Page 534.

Any trees on the land above described or structures thereon are included in this order of taking.

The names of the supposed owners and areas of taking are as follows:

SUPPOSED OWNERS	AREA TAKEN
Daniel J. Levey, Louis Detkin, Samuel Arlow, Dora Chalfin, Esther Frank, Violet Land, Bernard Grobman and Frank Grobman, doing business as Yarmouth Properties Company, a limited partnership	22.6± acres

ADOPTED and dated at Yarmouth this 11th day of March, 1986.

BOARD OF SELECTMEN
TOWN OF YARMOUTH,

Joel M. Wolfson

Joel M. Wolfson

Matthew J. Steele

Matthew J. Steele

JOHN C. CRENEY, P.C.
ATTORNEY-AT-LAW
17 EAST MAIN STREET
HYANNIS, MASSACHUSETTS
02601
617 - 771-0049

Robert W. Saben, Jr.

Douglas J. Antoon

Richard K. Johnson

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss March 11 , 1986

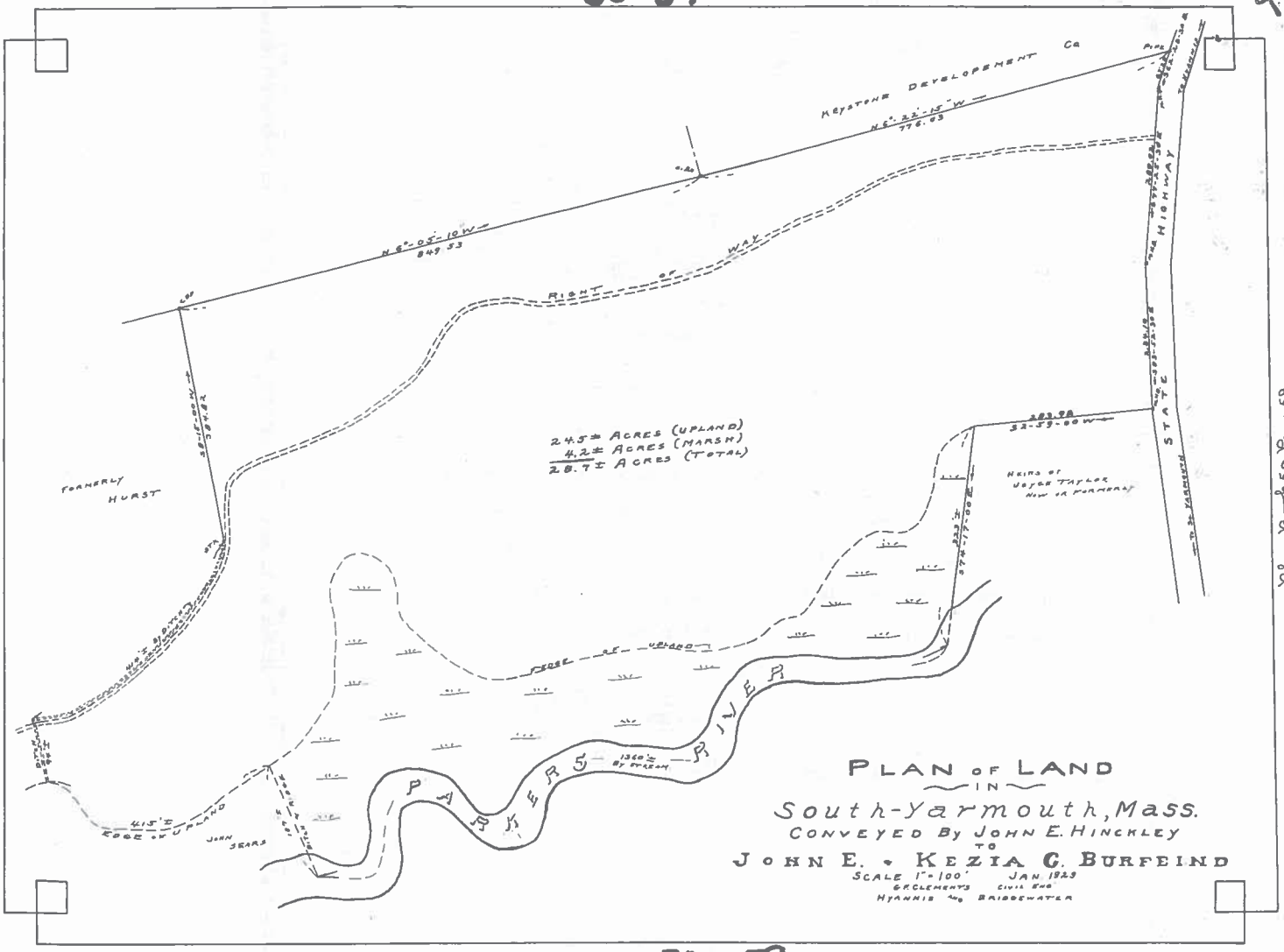
Then personally appeared the above named JOEL M. WOLFSON, MATTHEW J. STEELE, ROBERT W. SABEN, JR., DOUGLAS J. ANTOON and RICHARD K. JOHNSON as they constitute the Board of Selectmen of the Town of Yarmouth, and acknowledged the foregoing instrument to be the free act and deed of the Board of Selectmen of the Town of Yarmouth, before me,

Notary Public

My commission expires: December 18, 1992

JOHN C. CRENEY, P.C.
ATTORNEY AT LAW
12 EAST MAIN STREET
HYANNIS, MASSACHUSETTS
02601
617 771 0049

RECORDED MAR 28 86


Keystone Developement Co
N 6°-22'-15" W
776.03
N 6°-05'-10" W
849.53
Right of Way
24.5± Acres (Upland)
4.2± Acres (Marsh)
28.7± Acres (Total)
Formerly Hurst
Heirs of Joyce Taylor
Now or Formerly
State Highway
Edge of Upland
Edge of Upland
Parker River
1360'± By Stream
415'± Edge of Upland
John Sears
Plan Book 50 Page 59
Plan of Land
in
South-Yarmouth, Mass.
Conveyed By John E. Hinckley
to
John E. & Kezia C. Burfeind
Scale 1"=100'
Jan 1929
G.F. Clements Civil Eng
Hyannis & Bridgewater

Greene, Karen

From: MARK FOREST <mark.r.forest@gmail.com>
Sent: Saturday, September 30, 2017 10:40 AM
To: saben jim
Cc: Greene, Karen; Knapik, Daniel; Williams, Kathleen
Subject: Drive In- Follow Up - Additional Comments

Mr. Saben -

A few points I forgot to mention during your presentation at the Selectmen's Meeting.

1. Funding - I talked about the Drive In project during the Selectmen Comments.

- State Recreation Funds - Town staff should help the Committee examine grant funding options for passive recreation through the Division of Conservation Services.

- Seaport Bond Funds - Another source of funding to be examined is through the Seaport Advisory Council and Seaport bond funds.
The Council is Chaired by Lt Governor Polito. They have funded other waterfront developments, why not Yarmouth.
All you should be able get from them is a determination as to eligibility. Securing g the funds is another story.

- Transportation Funds - When I worked on the federal funding for Packets Landing, we secured it from the federal transportation budget.
Packets Landing's proximity to Route 28 - made it eligible for a little known area of funding - "transportation enhancements".
I worked on programming some of these "enhancement" dollars to Yarmouth.

Again, it was the proximity to a federally aided highway that helped get access to these transportation dollars.
Sometimes the Congress authorizes states to set aside a small portion of their FHWA allocation for "enhancements".
This would would need to be examined.

The town would have to make the case that it was enhancing Route 28, which I think it can.

2. Legal Review — I emphasized at the meeting a need to get legal clarity on the permitted uses under MGL Ch 40, section 8C.
Also, the state has a new definition of passive recreation - I attached it below.

We will need to examine the definition of "minimum disturbance", especially in view of the large boardwalk alternative.
It may be much more than the "minimum" level of disturbance as allowed in the regulations.

3. Band Shell — One of the potential uses mentioned specifically in the 1986 Town Meeting discussion was for - "A cathedral style band shell".
This is a use that is also consistent with Mass General Law Ch 40/Section 8c. I am interested in knowing if this has been examined.

I had the occasion to talk about this with Bob Nash at the Cultural Center.
He had recommended consideration of it- and thought the interest would be high. He says it could be a "revenue" source too.

If you located a band shell on the west side of the property facing northeast, toward rte 28, you could push the sound in that direction, away from the neighbors.
An orientation such as this would also enable audiences to enjoy some spectacular sunsets at that site during the summer.

But this use, may require an area be set aside for bathrooms, and maybe a concession area, but if these were located in a portion of the site that
had no environmental virtues, then you might be ok. The regs say you can have "appropriately scaled" parking and bathrooms.

I hope this is helpful. Please let me know if you have any questions.

Mark R. Forest
mark.r.forest@comcast.net

####

301 CMR 5.0:

> Any outdoor activity that occurs in a natural setting with minimum disturbance of the natural and cultural resources and that is consistent with quiet enjoyment of the land including but not limited to hiking, nature study, outdoor education, cross country skiing, snowshoeing, horseback riding, trail bicycling, hunting, fishing, picnicking, canoeing, ice-skating, community gardening in existing fields, swimming in a natural water body with minimal site development, or informal sports activities on an open natural field. For the purpose of eligibility and reimbursement under these regulations snowmobiling may considered passive outdoor recreations if the municipality determines that it is compatible with other activities. Facilities necessary to support passive recreation with a minimum of disturbance to the natural and cultural resources such as natural surface trails and wood roads, and appropriately-scaled parking areas, bathrooms, and nature centers are considered consistent with passive outdoor recreation. Passive outdoor recreation areas may also be managed for sustainable forestry and farming including community farms and forests.

On _/_/17, on a motion by _____, seconded by ____, the committee voted _-_ to approve the minutes.

Town of Yarmouth

MEETING MINUTES DRIVE-IN SITE UTILIZATION COMMITTEE MEETING OF
September 18, 2017

The Yarmouth **Drive-In Site Utilization Committee (DISUC)** held a Business Meeting at 3:00 p.m. on **Monday, September 18, 2017** in the Hearing Room of the Yarmouth Town Hall Offices located at 1146 Route 28, South Yarmouth, MA.

Committee Members Present: Jim Saben, David Reid, Peter Slovak, Rich Bilski, Jack McCormack, and Tom Roche

Committee Members Absent: Gerry Manning

Committee Alternates Present: Dave Helberg

Staff: Karen Greene, Director of Community Development; Kathy Williams, Town Planner; Kelly Grant, Conservation Administrator; Amy von Hone, Assistant Health Director.

Other Attendees: Please see the attached attendance list for members of the public who were in attendance.

1. **Minutes:**

   a. **July 31, 2017**

VOTE: On a motion by Tom Roche, seconded by David Reid, the Committee voted 6-0 to approve the minutes as amended.

   b. **August 23, 2017**

VOTE: On a motion by David Reid, seconded by Tom Roche, the Committee voted 5-0-1 (Rich Bilski abstaining) to approve the minutes as amended.

2. **Preparation for Meeting with Board of Selectmen:**

The Committee reviewed the draft memo to the Board of Selectmen. BETA is currently working on the visualizations of the Boardwalk and cost proposals for borings. The Riverwalk Park is ready for full cost estimating.

Dave Helberg asked if there wasn't some basic cost estimate available yet. Chairman Saben explained that BETA is working on it, but in the meantime the Committee's six-month report to the Board of Selectmen is due. A full presentation with cost estimates will be scheduled for a future date.

Larry Fennelly submitted a security report by based on his meeting with Chief Frederickson. His conclusion was that the Bass Hole and Meadow Brook Boardwalks are very safe. Mr. Fennelly also asked that the letter from Chris Erickson, "The Way I See It," regarding environmental impacts and wildlife be included in the report to the Board of Selectmen.

A section on Interim Uses for Lot 2 will also be included. The Committee asked staff to get updated quotes for Lot 2 site prep (scraping, re-loaming, and seeding) and clarification from Town Counsel regarding Article 97 and possible use restrictions. Tom Roche also asked for a section on maintenance to be included in the report.

On _/_/17, on a motion by _____, seconded by ____, the committee voted _-_ to approve the minutes.

The Committee's presentation is scheduled for September 26th. Mr. Helberg asked for more time for public input at the meeting. Chairman Saben reminded Mr. Helberg that the DISUC has allowed and accepted public input, and included a section on public comments in its update to the Board of Selectmen. He recommended that Mr. Helberg speak directly to the BOS Chair regarding how much time they will allow at their meeting.

Staff will send a revised draft of the memo for the Chairman's review prior to forwarding it to the Town Administrator's office.

3. <u>Interim Uses:</u>

The Committee recalled previous one-time events on Lot 2 like the circus and speed boat races. They will need clarification of the use restrictions in order to make recommendations on both interim uses and long-term lease or sale.

4. **<u>Next Meeting/Meeting Schedule</u>**:

   a. September 26, 2017 (with Board of Selectmen)

6. **<u>Adjournment</u>**: **VOTE: On a motion by Tom Roche, seconded by David Reid, the Committee voted unanimously (6-0) to adjourn at 4:05 PM.**

ATTACHMENTS:

- September 18, 2017 Agenda
- Draft Minutes of July 31, 2017
- Draft Minutes of August 23, 2017
- Draft Memo and packet to Board of Selectmen
- Center Street Report by L. Fennelly
- Meadow Brook Report by L. Fennelly
- L. Fennelly Comments re: R. Bilski email dated 08/23/17

DRAFT