

RUBIN AND RUDMAN LLP

COUNSELLORS AT LAW

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MEMORANDUM

To: Holliston Board of Appeals

From: Margaret A. Lavoie, Paralegal

Cc: Glenn A. Wood, Esquire
Robert A. Fasanella, Esquire

Re: Holliston, MA

Date: April 27, 2005

Two (2) full titles have been completed independently on the properties surrounding the 1.49 acre parcel of land, shown as Owner Unknown ["Locus Parcel"] and labeled Parcel 17 on Sheet 7, Block 3 of the Holliston Assessor's Map [Exhibit 1]. Both titles have been conducted by examiners with over 30 years of experience in the field of title research in Massachusetts, including rural properties and those presenting intricate problems. In both instances, the conclusion has been reached that the Locus Parcel was formerly owned by Enoch Chamberlain, and the Chamberlain Estate, and is the property across which a right-of-way was granted to benefit land formerly of Beniah Morse, as recited in the deed of Anna L. Taft and James E. Taft dated November 12, 1880 and recorded with the Middlesex County, South District, Registry of Deeds on June 15, 1881 in Book 1570, Page 106 [Exhibit 2]. Said property ["Bird Property"] is now owned by Charles S. Bird and Ruth L. Bird, Trustees of the R & C Realty Trust ["R & C Realty"], by deed of Charles S. Bird and Ruth L. Bird dated May 29, 1986 and recorded as above on June 10, 1986 in Book 17084, Page 525 [Exhibit 3]. Reference is also made to the deed from Gardner W. Morse to Charles S. Bird and Ruth L. Bird, dated July 3, 1962 and recorded as above on July 9, 1962 in Book 10073, Page 96 [Exhibit 4].

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This conclusion is arrived at through the examinations of the title to the Bird Property, deed to which is recited above, as well as those of the property at 141 Marshall Street, Holliston, currently owned by William C. Tomasetti and Catherine P. Tomasetti, and the property at 183 Marshall Street, Holliston, currently owned by Paul R. Annunziata.

Bird Property

We have direct evidence of the ownership by R & C Realty of the parcel shown as containing "2.55 A" on Sheet 7, Block 3 of the Holliston Assessor's Map through the deed of Anna L. Taft and James E. Taft to Beniah Morse, dated November 12, 1880 and recorded with the Middlesex County, South District, Registry of Deeds on June 15, 1881 in Book 1570, Page 106. Said property is now owned by Charles S. Bird and Ruth L. Bird, Trustees of the R & C Realty Trust ["R & C Realty"], by deed of Charles S. Bird and Ruth L. Bird dated May 29, 1986 and recorded as above on June 10, 1986 in Book 17084, Page 525 ["Bird Property"]. Reference is also made to the deed from Gardner W. Morse to Charles S. Bird and Ruth L. Bird, dated July 3, 1962 and recorded as above on July 9, 1962 in Book 10073, Page 96. Said "2.55 A" parcel on Sheet 7, Block 3, which is directly west of and adjacent to the Locus Parcel, does not have a separate lot number assigned by the Holliston Assessor. The symbol resembling a slash [/] on the north bound of said "2.55 A" parcel, between it and the "35.9 A" parcel, shown as Lot 19 on said Sheet 7, Block 3 indicates that they are both assessed together, and have been merged by the deeds to common owners. Were the "2.55 A" parcel and the "35.9 A" parcel assessed to and owned by different parties, both would have to be assigned their own parcel numbers by the Assessor. This common ownership goes back to at least the November 12, 1880 deed to Beniah Morse, wherein a property containing 20.7 acres, which is now part of the "35.9 A" is conveyed together with a parcel containing 2.5 acres, being adjacent to the 20.7 acre parcel. The 2.5 acre parcel is described as being surrounded on the west, south and east by land "late of the heirs of Enoch Chamberlain" which corresponds to the titles to the properties known as 141 Marshall Street and 183 Marshall Street hereinafter set forth. The original description associated with the said 183 Marshall Street also further establishes the "2.55 A" parcel as being adjacent to said Locus Parcel, since the westerly abutter is recited as James E. Taft, the grantor in the November 12, 1880 deed to Beniah Morse.

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141 Marshall Street, Holliston

A full Chain of Title to 141 Marshall Street, Holliston is included herewith [Exhibit 5] which includes copies of all deeds and plans referenced therein. Said property is currently owned by William C. Tomasetti and Catherine P. Tomasetti by deed of David E. Fillmore and Susan M. Fillmore dated November 29, 1982, recorded as above on December 3, 1982, Book 14808, Page 41 [Exhibit A], is started with the deed from Nellie H. Spofford, wife of F. L. Spofford, to Elisha Milo Warren dated June 10, 1878, recorded as above on October 9, 1878, Book 1492, Page 180 [Exhibit H]. The reference on said last deed recites the property being "the same premises set off to me from the widow's third of the Enoch Chamberlain Estate." Said property is shown as Lot 1 on Plan 1060 of 1976 in Book 13062, Page End [Exhibit I], with the southerly bound shown as being along land of "Owner or Owners Unknown." A prior plan, recorded as above as Plan 871 of 1957 in Book 8964, Page 451 [Exhibit J], shows the southerly bound as being along land of Marion Thayer Blood. Both examinations failed to show any evidence of the title to this property forming the southerly bound of 141 Marshall Street, Holliston ever being in the name of Marion Thayer Blood, her predecessors or heirs. She may have resided at or used the property as a tenant, even paying the real estate taxes, but no deed to the property can be conclusively tied to her. The confusion to the ownership may have come as a result of other properties in the area having once been owned in part by Ms. Blood's late husband or the Thayer family, but none of these properties, including those twenty three (23) parcels which appear on the Inventory of the Estate of Marion Thayer Blood and are described in the deed from the Administrator of her Estate recorded as above in Book 11714, Page 676 [Exhibit U], abuts Marshall Street or a public way which may be construed as being Marshall Street. Such mislabeling of property ownership on atlases is not unheard of, and the naming of property owners on atlases is not taken as good evidence of title without a deed or evidence of inheritance to confirm such ownership.

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183 Marshall Street, Holliston

A full Chain of Title to 183 Marshall Street, Holliston is included herewith [Exhibit 5] which includes copies of all deeds and plans referenced therein. Said property is currently owned by Paul R. Annunziata by deed of David F. Garland and Kathleen M. Garland dated May 30, 1979, recorded as above on June 1, 1979, Book 13703, Page 734 [Exhibit K], is started with the deed from Charles Chamberlain to John D. Shippee and Albert F. Shippee dated January 19, 1880, recorded as above on February 25, 1880, Book 1533, Page 486 [Exhibit R]. Said property is shown as Lot 1, on Plan 499 of 1969 in Book 11683, Page 440 [Exhibit S], which is a portion of Lot A, on Plan 138 of 1947 in Book 7093, Page 440 [Exhibit T]. Said Plan 138 of 1947 recites the northerly bound as being along land "Now or formerly of Milo Warren". Land to the north of this property, being 141 Marshall Street, Holliston as described herein, was conveyed to Elisha Milo Warren in 1878, which is probably where the "Now or formerly of Milo Warren" reference originates. Said Plan 499 of 1969 recites the northerly bound as being along land "n/f of Marion Thayer Blood" which reference is addressed above in connection with the southerly bound of 141 Marshall Street, Holliston.

CONCLUSION

All evidence accumulated by both title examiners, and arrived at independently, shows the following:

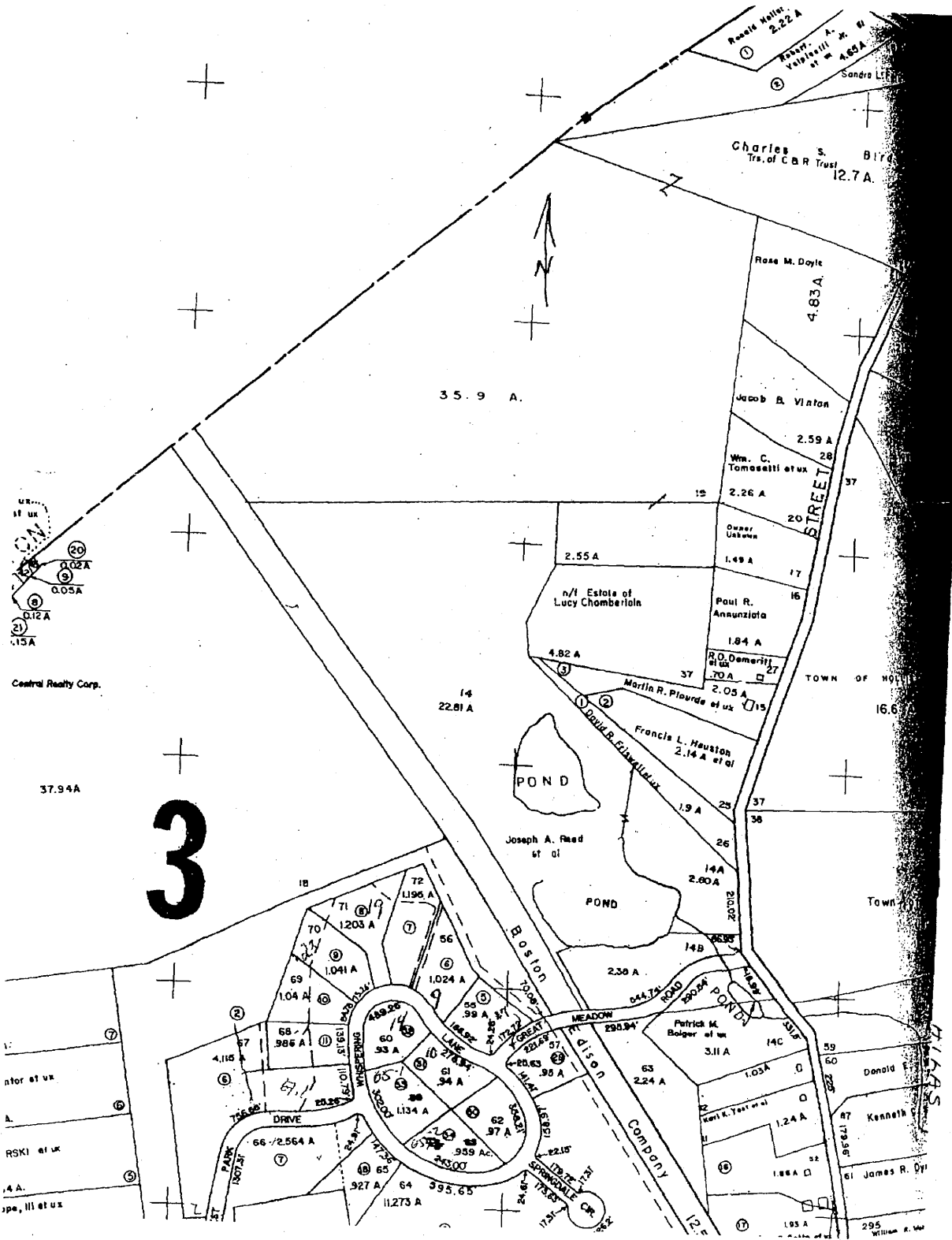
1. The Locus Parcel, being the 1.49 acre parcel of land, shown as Owner Unknown and labeled Parcel 17 on Sheet 7, Block 3 of the Holliston Assessor's Map is the same as the property is the property across which a right-of-way was granted to benefit land formerly of Beniah Morse, as recited in the deed of Anna L. Taft and James E. Taft dated November 12, 1880 and recorded with the Middlesex County, South District, Registry of Deeds on June 15, 1881 in Book 1570, Page 106; and further that this benefited property is now owned by Charles S. Bird and Ruth L. Bird, Trustees of the R & C Realty Trust ["R & C Realty"], by deed of Charles S. Bird and Ruth L. Bird dated May 29, 1986 and recorded as above on June 10, 1986 in Book 17084, Page 525. No evidence is found of record wherein the right of way was ever rescinded or released, and pictorial evidence on the ground, and included on a separate report, indicates the said right of way has been used continuously and openly for a period of time which would exclude abandonment of the easement.

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2. The "2.55 A" parcel on Sheet 7, Block 3 of the Assessor's Map is owned by Charles S. Bird and Ruth L. Bird, Trustees of the R & C Realty Trust ["R & C Realty"], by deed of Charles S. Bird and Ruth L. Bird dated May 29, 1986 and recorded as above on June 10, 1986 in Book 17084, Page 525.

GreenView Realty, LLC
Opinion of Council
Former Bird Property
Holliston, MA

EXHIBIT 1



US
ST UK
0.02A
0.05A
0.12A
0.15A

Central Realty Corp.

37.94A

3

ntor et ux
A.
RSKI et ux
.4 A.
pe, III et ux

Town

Donald
Kenneth
James R. D
William R. W

GreenView Realty, LLC
Opinion of Council

Former Bird Property
Holliston, MA

EXHIBIT 2

190
1570

1570-196

1880

of her relinquishment of her right of dower in the above described premises, have hereto set her hand and seal this and day of _____ 1880
number in _____
seventy six _____
ed, Sealed _____
chusetts _____
above named _____
to be his _____
the Peace.

1570-196

Gift & ab.
to
Morse.

That we, _____
Holliston in _____
chusetts in _____
paid by _____
by acknowledgment _____
into the _____
parcel of _____
twenty acres _____

20.7 acres

136°15'E =
991.98'

339°E =
18.48'

32°38'E =
396'

517°E =
66'

70°10'W =
95.7'

67°E =
712.14'

13°W =
280.5'

4°30'N =
1685.64'

15°E =
331.32'

described a _____
on land of _____
East sixty _____
links to a _____
to a stake _____
and stone _____
stake and _____
thence Sou _____
West 4°30' _____
and stone _____
of beginn _____
late of _____
passing a _____
reserving _____
berlain fo _____
to the 16th _____
land site _____
scribed fo _____
and four _____
and stone _____

GreenView Realty, LLC
Opinion of Council
Former Bird Property
Holliston, MA

EXHIBIT 3

10073-96
d. 7/3/1968

JUL -9-62:AM 11:54 121RE***7.00

BK 10073 PG 096

K 704

I, Gardner W. Morse
of Holliston, Middlesex County, Massachusetts,

~~being married~~, for consideration paid, grant to Charles S. Bird and Ruth L. Bird,
husband and wife, as tenants by the entirety, both

of said Holliston

with quitclaim covenants

the land in said Holliston, bounded and described as follows:

(Description and encumbrances, if any)

First: A certain parcel of land containing fifteen (15) acres more or less bounded as follows:

Westerly by land now or formerly of Levi Woolson;
Northerly by land now or formerly of George Adams;
Easterly by land now or formerly of Enoch Chamberlain, and
Southerly by land now or formerly of Seth T. Hewes, or
however otherwise the same may be bounded or described.

Being the same premises conveyed by Robert R. Bishop, Jr. et al to Willard B. Morse by deed dated December 8, 1910 and recorded in the South Middlesex Registry of Deeds, Book 3575, Page 68. ✓

Second: A certain parcel of land containing twenty (20) acres more or less bounded and described as follows:

Beginning at a stake on Holliston line on land formerly of Nathan Woolson thence running North 36° 15' East sixty rods three links - thence South 39° East one rod three links to stake and stones - thence South 32° 38' East twenty-four rods to a stake and stones - thence South 17° East four rods to a stake and stones - thence South 10° 10' West five rods twenty links to a stake and stones - thence South 67° East forty-three rods four links - thence South 13° West seventeen rods to a stake and stones - thence West 4° 30' North one hundred and two rods four links to a stake and stones - thence North 5° East twenty rods two links to the place of beginning. Also the privilege of a bridle-way through the land late of Enoch Chamberlain to the Town Way for all necessary passing and repassing to and from said land, excepting and reserving the privilege to the heirs and assigns of said Chamberlain forever, of plowing said way from the 20th of September to the 16th day of April annually.

Also a certain other tract of land situated in said Holliston and adjoining the above described parcel, containing two and one-half acres more or less, and bounded and described as follows viz: Beginning at a stake and stones at the North-East corner of the premises thence running Westerly and bounded Northerly on land now or formerly of Mewes to a stake and stones - thence Southerly on land late of the heirs of Enoch Chamberlain to a stake and stones - thence Easterly on said land formerly of Chamberlain aforesaid to a stake and stones - thence Northerly on said Chamberlain land to the place of beginning.

Being the same premises conveyed by Anna Taft and James Taft to Beniah Morse by deed dated November 12, 1880 and recorded in the South Middlesex Registry of Deeds at Book 1570, Page 196.

For my title see Estate of Walter R. Morse, Middlesex Probate No. 163091, Estate of Nettie G. Morse, Middlesex Probate No. 263632, Estate of Willard B. Morse, Middlesex Probate No. 121369, and Estate of Beniah Morse, Middlesex Probate No. 69281.

Said premises are hereby conveyed subject to conditions and restrictions of record so far as they are in force and applicable and more particularly to an easement granted to the Edison Electric Illuminating Company of Boston by deed of Walter R. Morse, Conservator, dated March 20, 1918 and recorded in South Middlesex Registry of Deeds, Book 4190, Page 474.



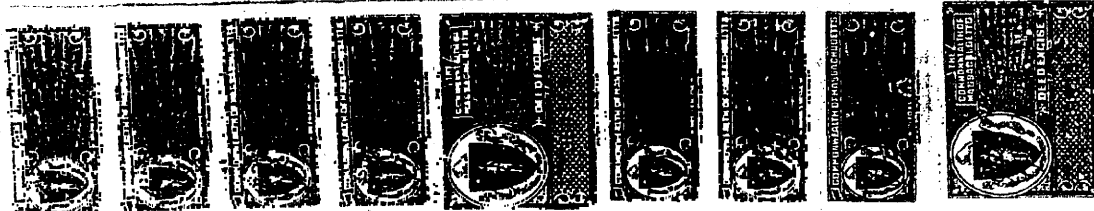
I, Mildred A. Morse ~~husband~~ wife of said grantor,

release to said grantee all rights of ~~tenancy by the entirety~~ dower and homestead and other interests therein.

Witness our hands and seals this 3rd day of July 1962

Mildred A. Morse
Mildred A. Morse

Gardner W. Morse
Gardner W. Morse



The Commonwealth of Massachusetts

M 1066,

ss.

July 3 1962

Then personally appeared the above named Gardner W. Morse and Mildred A. Morse

and acknowledged the foregoing instrument to be their free act and deed before me

Paul J. Jensen
Notary Public - ~~in the County of Middlesex~~
My commission expires 4/23 1965

RECORDED IN 1734 121 RE ***7.00

BK10073 PG096

Handwritten mark

10073-96
d. 7/3/1962

BACK

I, Gardner W. Morse

of Holliston, Middlesex

County, Massachusetts,

being ~~un~~married, for consideration paid, grant to Charles S. Bird and Ruth L. Bird, husband and wife, as tenants by the entirety, both

of said Holliston

with quitclaim covenants

the land in said Holliston, bounded and described as follows:

(Description and encumbrances, if any)

First: A certain parcel of land containing fifteen (15) acres more or less bounded as follows:

15+

Westerly by land now or formerly of Levi Woolson;
Northerly by land now or formerly of George Adams;
Easterly by land now or formerly of Enoch Chamberlain, and
Southerly by land now or formerly of Seth T. Hewes, or
however otherwise the same may be bounded or described.

Being the same premises conveyed by Robert R. Bishop, Jr. et al to Willard B. Morse by deed dated December 8, 1910 and recorded in the South Middlesex Registry of Deeds, Book 3575, Page 68.

Second: A certain parcel of land containing twenty (20) acres more or less bounded and described as follows:

20 +
35 +
(35.90)

Beginning at a stake on Holliston line on land formerly of Nathan Woolson thence running North 36° 15' East sixty rods three links - thence South 39° East one rod three links to stake and stones - thence South 32° 38' East twenty-four rods to a stake and stones - thence South 17° East four rods to a stake and stones - thence South 10° 10' West five rods twenty links to a stake and stones - thence South 67° East forty-three rods four links - thence South 13° West seventeen rods to a stake and stones - thence West 4° 30' North one hundred and two rods four links to a stake and stones - thence North 5° East twenty rods two links to the place of beginning. Also the privilege of a bridle-way through the land late of Enoch Chamberlain to the Town Way for all necessary passing and repassing to and from said land, excepting and reserving the privilege to the heirs and assigns of said Chamberlain forever, of plowing said way from the 20th of September to the 16th day of April annually.

Also a certain other tract of land situated in said Holliston and adjoining the above described parcel, containing two and one-half acres more or less, and bounded and described as follows viz: Beginning at a stake and stones at the North-East corner of the premises thence running Westerly and bounded Northerly on land now or formerly of Mewes to a stake and stones - thence Southerly on land late of the heirs of Enoch Chamberlain to a stake and stones - thence Easterly on said land formerly of Chamberlain aforesaid to a stake and stones - thence Northerly on said Chamberlain land to the place of beginning.

• Looks like the 255 Acres was Charlie's
BK10073 PG096

