

HEARINGS, MEETINGS, LICENSES
10-6-08

(Town Seal)

A hearing will be held in the Selectmen's Meeting Room at the Town Hall, 10 Nickerson Avenue, Middleborough, MA on Monday, August 25, 2008 at 7:05 PM, for the purpose of discussing an application filed by Green Seal Environmental, Inc. on behalf of Costello Dismantling Co., Inc., for an Earth Removal Permit for property located at 699 Wareham Street, Middleborough, MA, Assessors Map 17, Lot 52. The reason for this request is for removal of remaining 25,000 cubic yards from the site in order to fully develop the property. Anyone desiring to be heard on this matter should appear at the time and place designated.

Adam M. Bond, Chairman
Patrick Rogers
Steven P. Spataro
Muriel Duphily
Marsha L. Brunelle *
BOARD OF SELECTMEN

Publish: August 14, 2008

19/6 Hrg. continued from 8/25/08

Incorporated 1669
339 Years of Progress



**CRANBERRY CAPITAL
OF THE WORLD**



Town of Middleborough

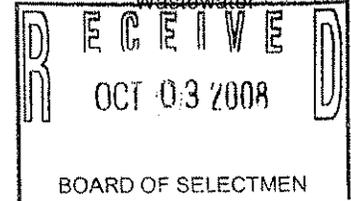
Massachusetts

Department of Public Works

48 Wareham Street
Middleborough, MA 02346
Tel. 508-946-2480
Fax 508-946-2484

Donald A. Boucher
Highway Superintendent
Joseph M. Ciaglo
Wastewater Superintendent
Richard E. Tinkham
Water Superintendent

DIVISIONS
Highway
Sanitation
Insect & Pest Control
Tree Warden
Water
Wastewater



October 3, 2008

Board of Selectmen
Town Hall
10 Nickerson Avenue
Middleboro, MA 02346

Re: Earth Removal for Costello Dismantling Company, Incorporated #07-01

Dear Chairman and Board Members:

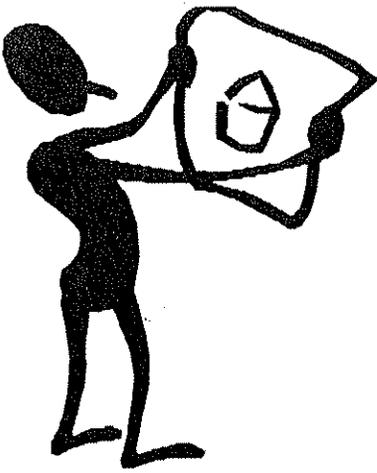
I would like to recommend that the Board of Selectmen suspend the Earth Removal Permit for Costello Dismantling Company, Incorporated, #07-01 (expired) until they receive a demolition permit for the existing structures and are prepared to remove the remaining material. Then I would recommend that the Board of Selectmen extend their permit, #07-01, for one (1) year.

Any questions please contact me.

Very Truly Yours,

Donald A. Boucher,
Highway Superintendent

Cc: Town Manager
File



MIDDLEBOROUGH CONSERVATION COMMISSION
Agent Site Inspection

Date of Request:

9/

Request from:

Gary James

Site to visit:

Castello Dismantling

Date and Time of visit:

9/11/08 9am

Contact person at site:

Sean Rae

Comments:

Will be filing an ANRMS for wetlands to the South that would also include riverfront
Have permit for ABC material with DEP solid waste
Still need to do detention basin near entrance - Rochester
and basin in buffer zone to west - will need to contact
Agent for buyback inspection

Copy of this report has been forwarded:

Signature: *Patricia Cassidy, Agent*

* Chairman to open hrg. and
continue to next week.
Date T.B.D. @ 10/6 meeting.
Need feedback from Planning Board
to proceed.

(Town Seal)

The Board of Selectmen will hold a public hearing in the Selectmen's Meeting Room at the Town Hall, 10 Nickerson Avenue, Middleborough, MA on Monday, October 6, 2008 at 7:20 PM to accept the layout of Tispaquin Farms, Silo Lane in Middleborough, MA, on such terms as the Selectmen shall determine for the purposes of a Town way, such property being shown on a plan entitled "Silo Lane 'Tispaquin Farms' - Roadway layout - A Chapter 40B Development in Middleborough, MA", dated September 3, 2008, drawn by John W. Delano and Associates, Inc., which plan is on file with the Town Clerk's Office.

Adam M. Bond
Patrick E. Rogers
Steven P. Spataro
Muriel C. Duphily
Marsha L. Brunelle

BOARD OF SELECTMEN

Publish: September 18, 2008

(TOWN SEAL)

A hearing will be held by the Board of Selectmen on Monday, October 6, 2008 at 7:30 PM in the Selectmen's Meeting Room at the Town Hall, located at 10 Nickerson Avenue, Middleborough, MA for the purpose of discussing application made by Manuel S. Rosa d/b/a "North Main Street Market", for a Wine & Malt Beverages Package Goods Store Liquor license to property located at 21 North Main Street, Middleboro, MA Assessors Map 50P, Lot 6261, Middleborough, MA. Anyone desiring to be heard on this matter should appear at the time and place designated.

Adam M. Bond
Patrick E. Rogers
Steven P. Spataro
Muriel C. Duphily
Marsha L. Brunelle

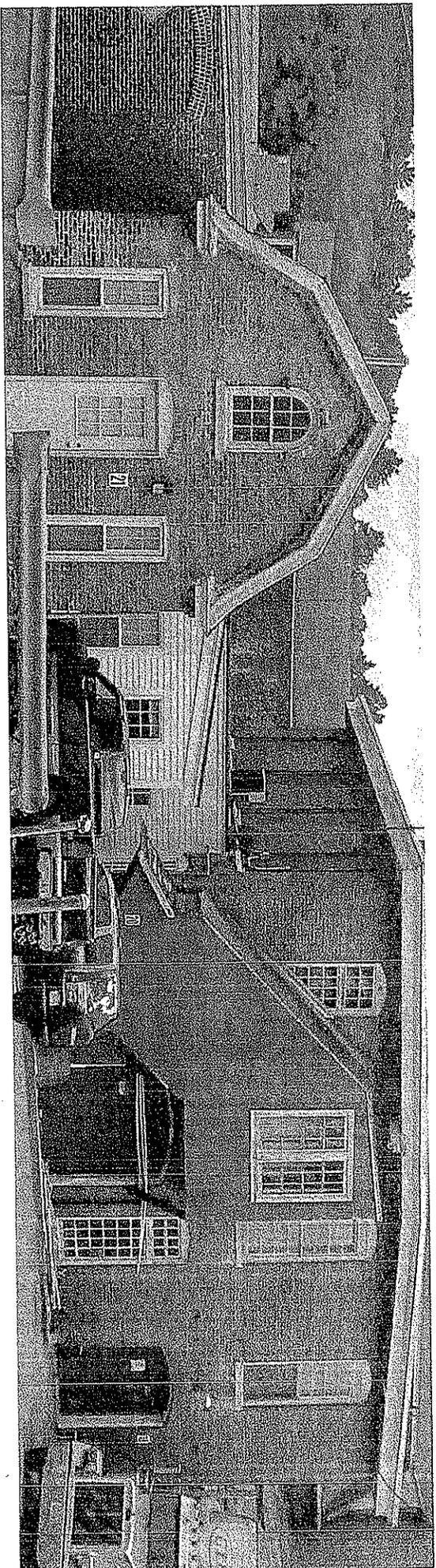
Publish: September 18, 2008

Star Mill — Walker Building, Middleborough, MA

Conceptual Reuse Study

DRAFT

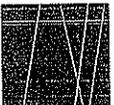
September, 30 2008



Prepared For:

Town of Middleborough
20 Centre Street
Middleborough, MA 02346-0490

DURKEE BROWN
VIERROS WERNICHEL
ARCHITECTS
1401 201 100
PROVIDENCE, RI 02902
www.durbrow.com



I. EXECUTIVE SUMMARY

Durkee, Brown, Viveiros & Werenfels Architects (DBVW) was hired to provide pre-development planning services to assist the Town of Middleborough, MA in determining whether the acceptance of the Star Mill complex, as a gift, would be beneficial to the Town. The Town is seeking to determine re-use options and management strategies for the property. DBVW was notified of the contract award on August 27th, 2008 and asked to complete the following scope of services:

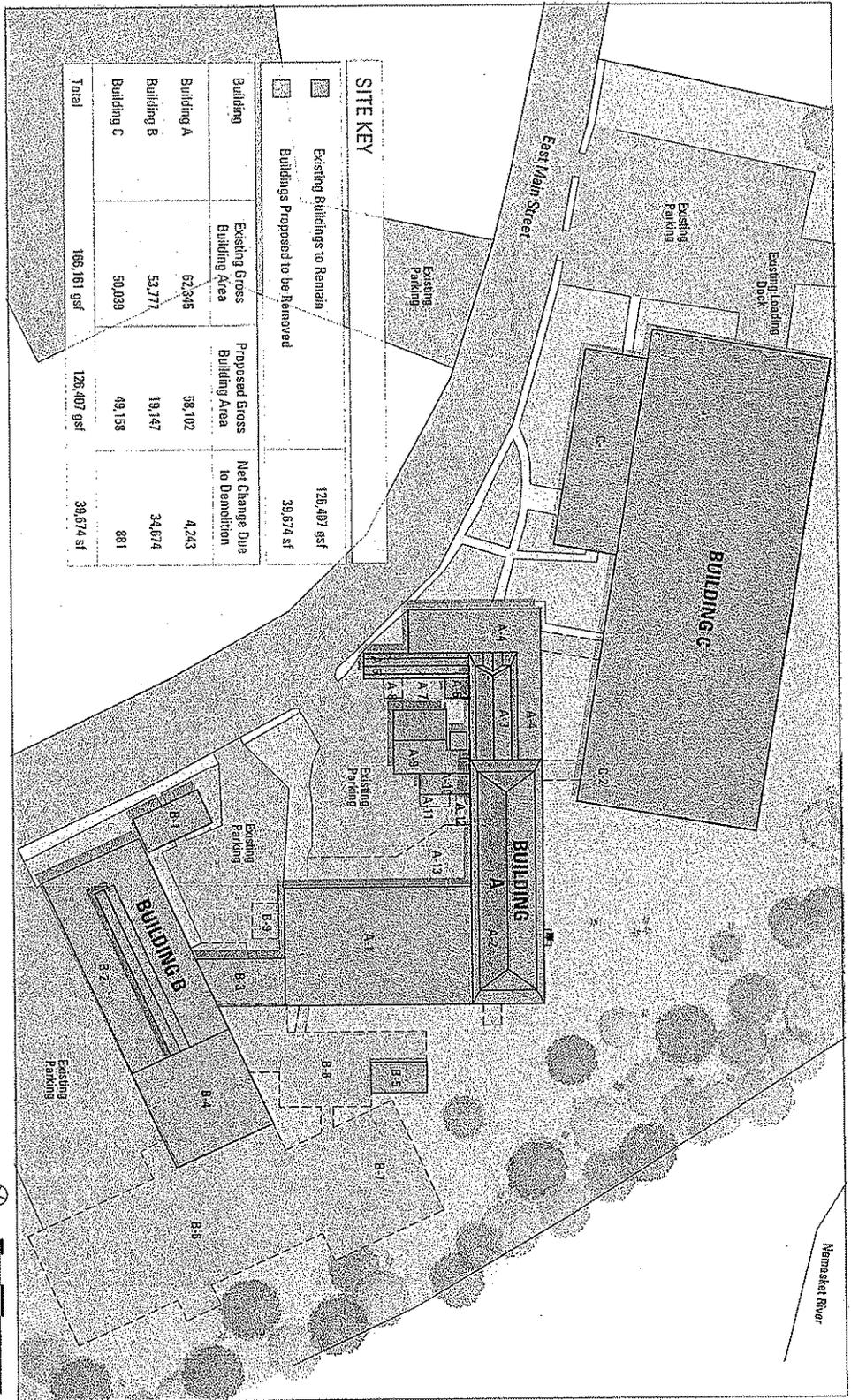
- A. Document the existing buildings and develop conceptual building and site drawings.
- B. Analyze the historic significance of the complex.
- C. Perform a visual inspection of all buildings.
- D. Attend a stakeholders meeting.
- E. Identify building site and re-use constraints.
- F. Prepare a structural report.
- G. Provide building management recommendations and examples.
- H. Develop building and site re-use options including estimated costs.
- I. Advise on the next steps that the Town should take and prepare public presentation.

The work performed by DBVW as part of this Phase is limited to that which is listed above and excludes services related to hazardous materials, soil testing, civil site survey (which would identify exact flood zones, wetlands, grade changes), developer selection, grant writing, finance options, and professional cost estimating.

The Star Mill-Walker Building complex represents 165,000 gross square feet of building (identified as Buildings A, B and C) on 11 acres of land with an additional 1.5 acre parcel on the opposite side of East Main Street. DBVW understands that the current property Owner would like to either retain Ownership or have a lease option for Building C with parking. DBVW has approached the study of building re-use and parking options with this information under consideration.

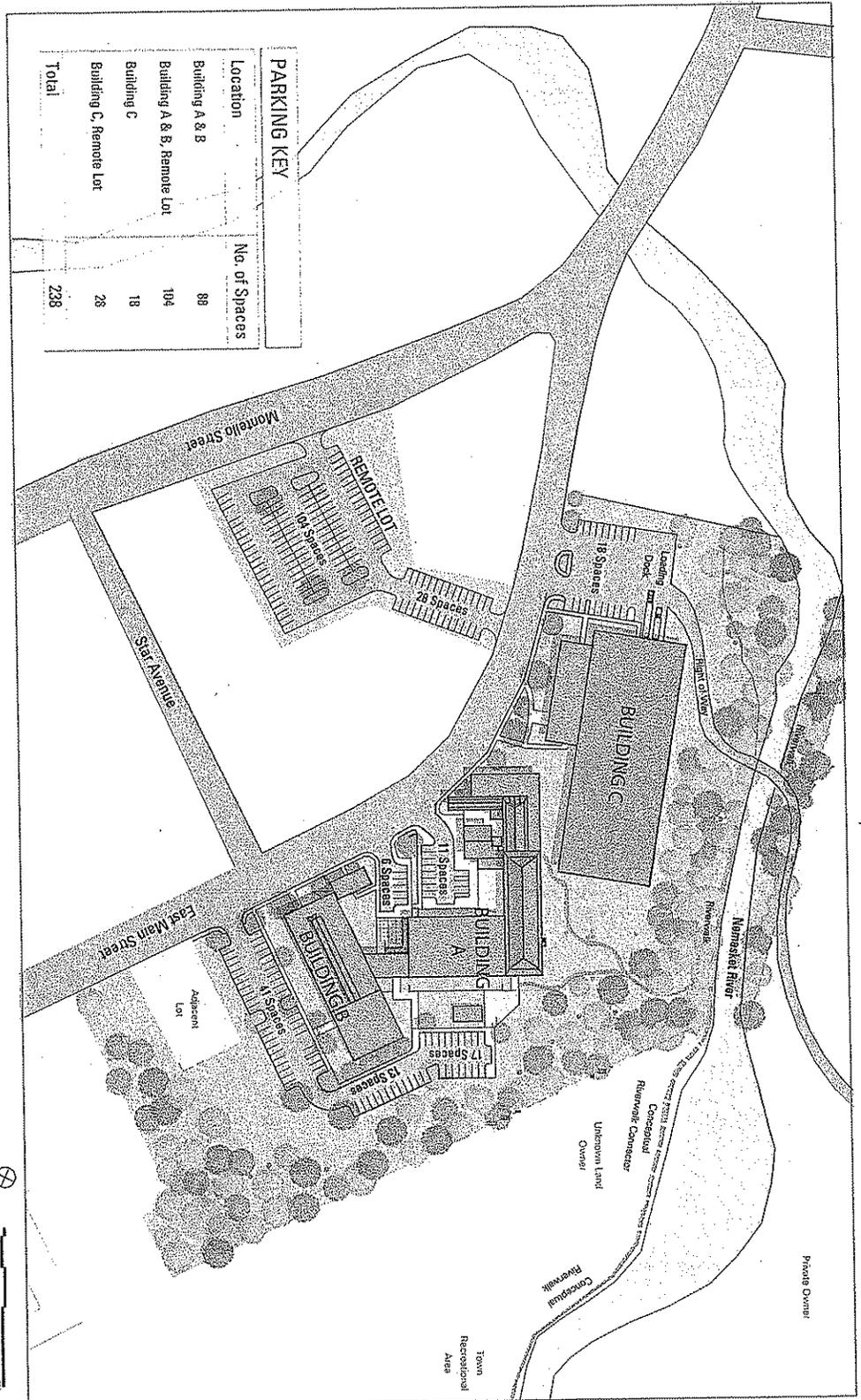
DBVW and its consultants have determined that the buildings are suitable for rehabilitation and have identified the following re-use groups as most appropriate based upon architectural, structural and real estate market analysis: residential, select recreational, select service and select business use. Independent of the market analysis, DBVW holds the opinion that architecturally, the group of buildings are suitable for other uses in terms of square feet and building features. It shall be up to the Town and future developers to evaluate the study that follows and determine what risk or vision should ultimately be pursued. As a reflection of the collective professional analysis (architectural, structural and real estate) two building schemes and parking plans have been developed. These schemes allow for flexibility in terms of building re-use. Upon evaluating the existing buildings and site, DBVW has proposed removing select later building additions that are non-contributing to future site development for various reasons. These removals enable the significant building features to be maintained and allow for more opportunities in terms of site re-use, building access, and views. The study that follows supports the determinations that have been made above.

Star Mill — Walker Building Conceptual Re-Use Study
 Middleborough, MA



Site Plan 0.0
 PROPOSED REMOVALS

Star Mill - Walker Building Conceptual Re-Use Study
 Middleborough, MA



Location	No. of Spaces
Building A & B	88
Building A & B, Remote Lot	104
Building C	18
Building C, Remote Lot	28
Total	238

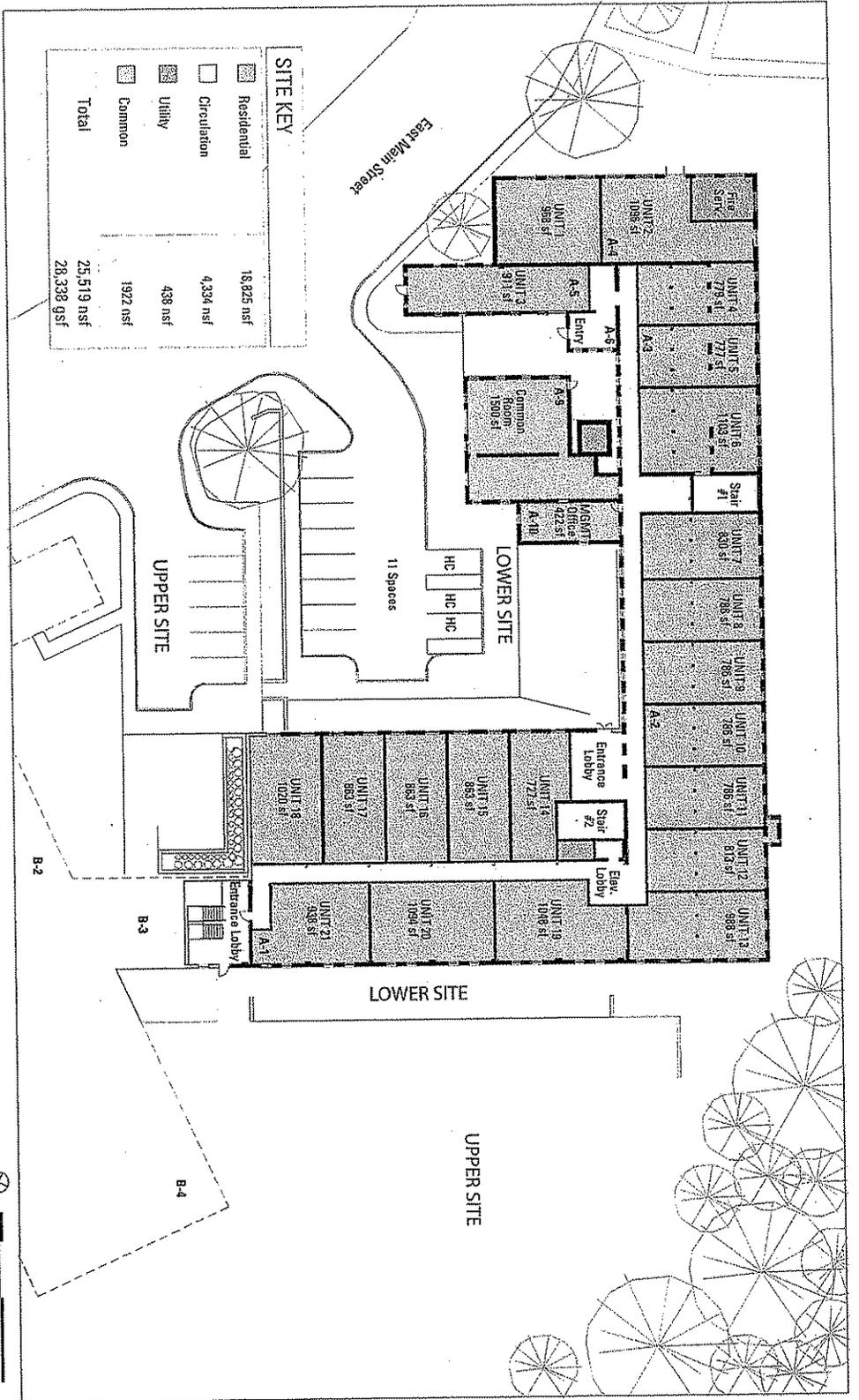
Site Plan
 OPTION ONE

1.0

DURKEE BROWN
 WIGGINS WIRENIELS
 ARCHITECTS
 7100 STATE STREET
 MIDDLEBOROUGH, MA 01948



Star Mill – Walker Building Conceptual Re-Use Study
 Middleborough, MA



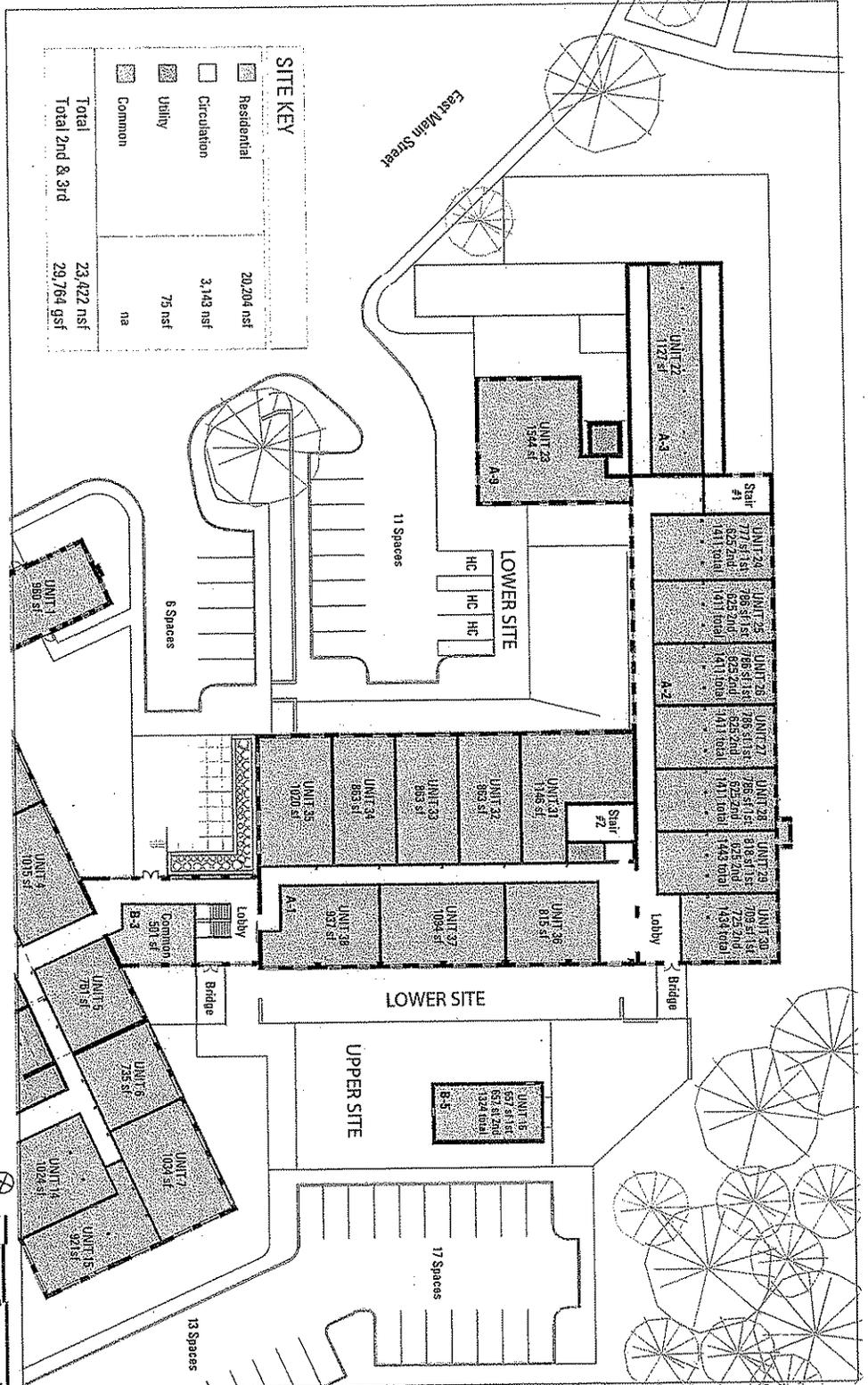
Building A: First Floor Plan
 OPTION ONE

1.1

DURKEE BROWN
 VANDERBOS WENEFELS
 ARCHITECTS
 700 NORTH WASHINGTON STREET
 MIDDLEBOROUGH, MA 01948



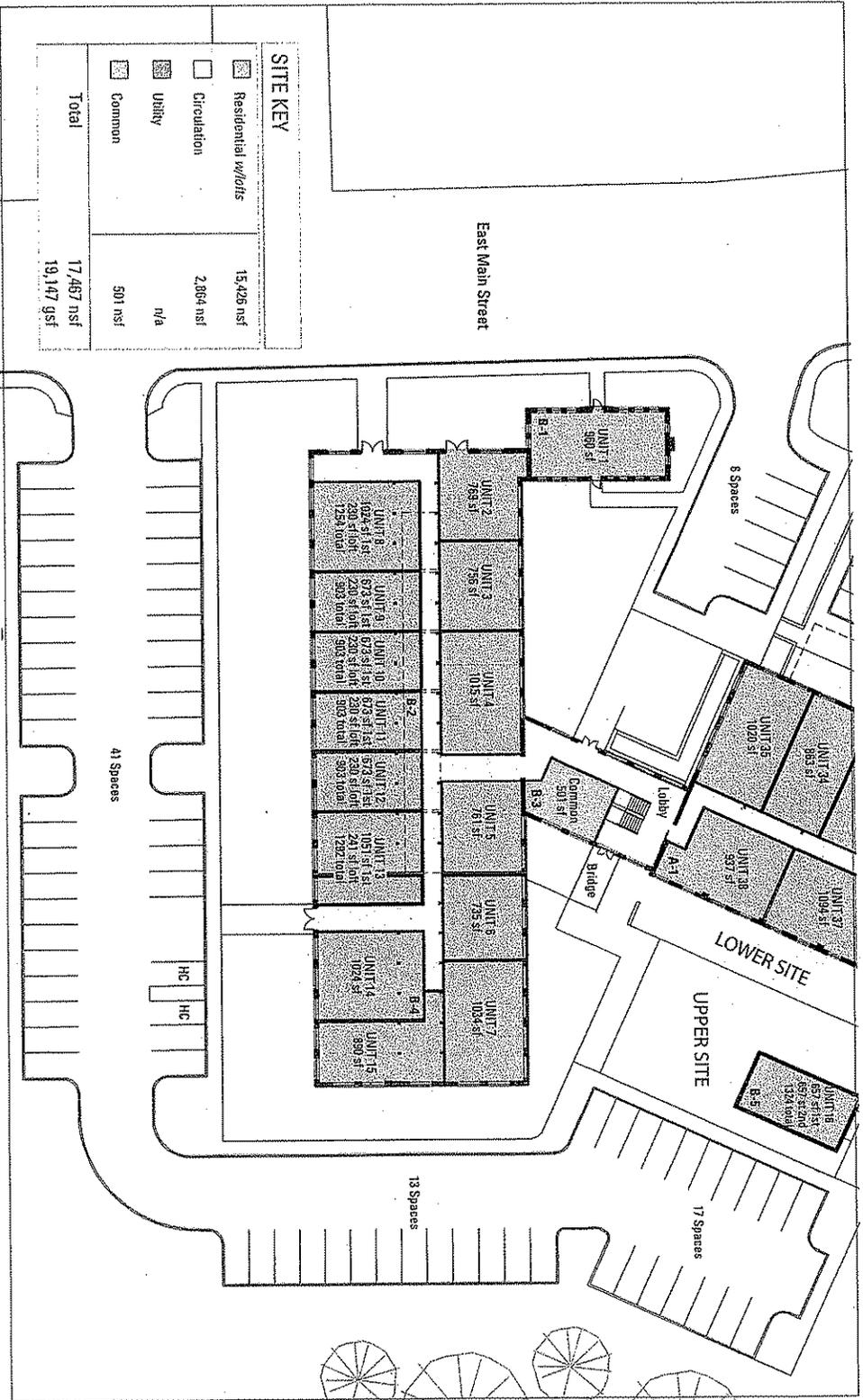
Star Mill - Walker Building Conceptual Re-Use Study
 Middleborough, MA



Building A: Second Floor Plan
 OPTION ONE

1.2

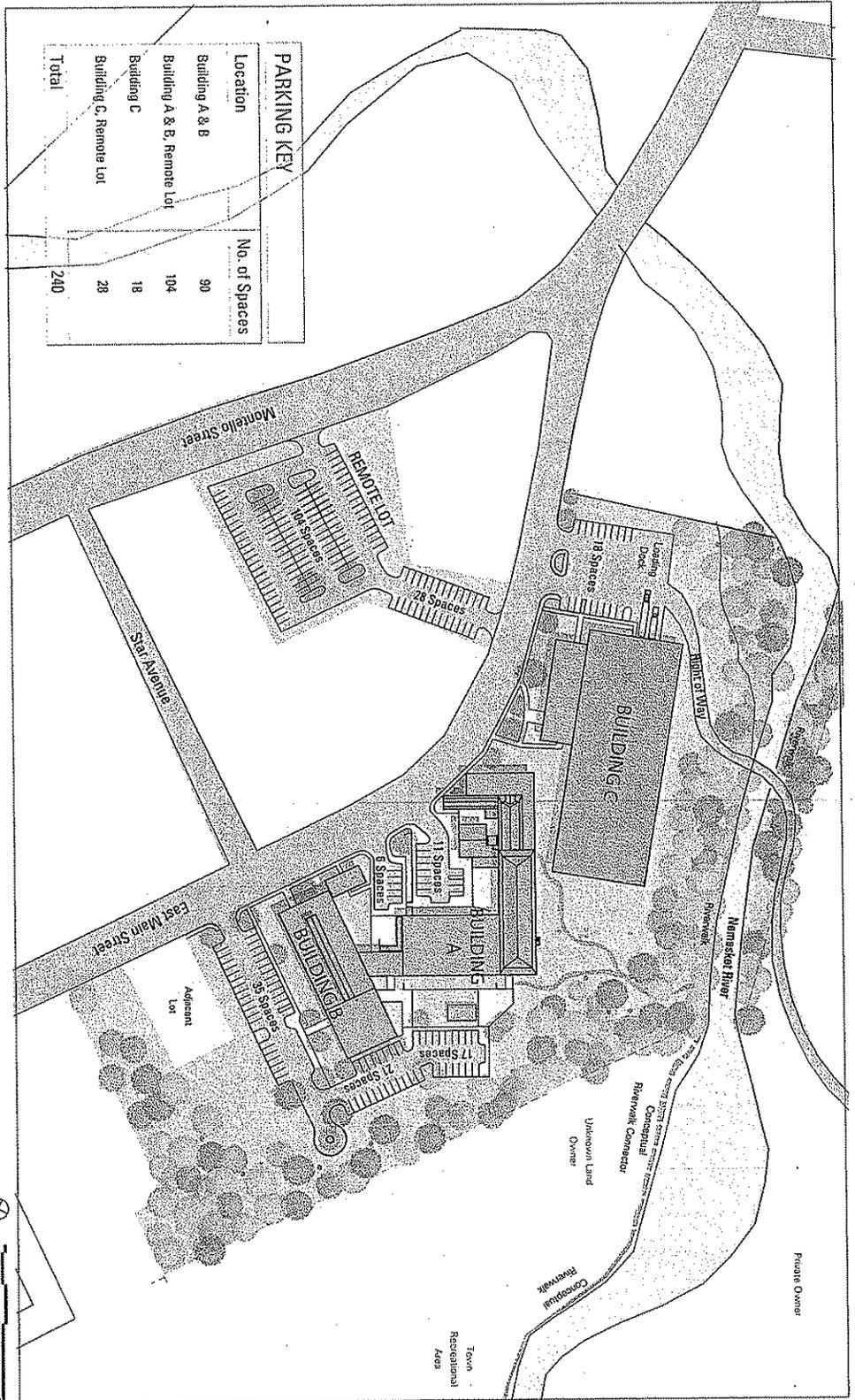
Star Mill - Walker Building Conceptual Re-Use Study
 Middleborough, MA



Building B: Second Floor Plan
 OPTION ONE

1.3

Star Mill - Walker Building Conceptual Re-Use Study
 Middleborough, MA



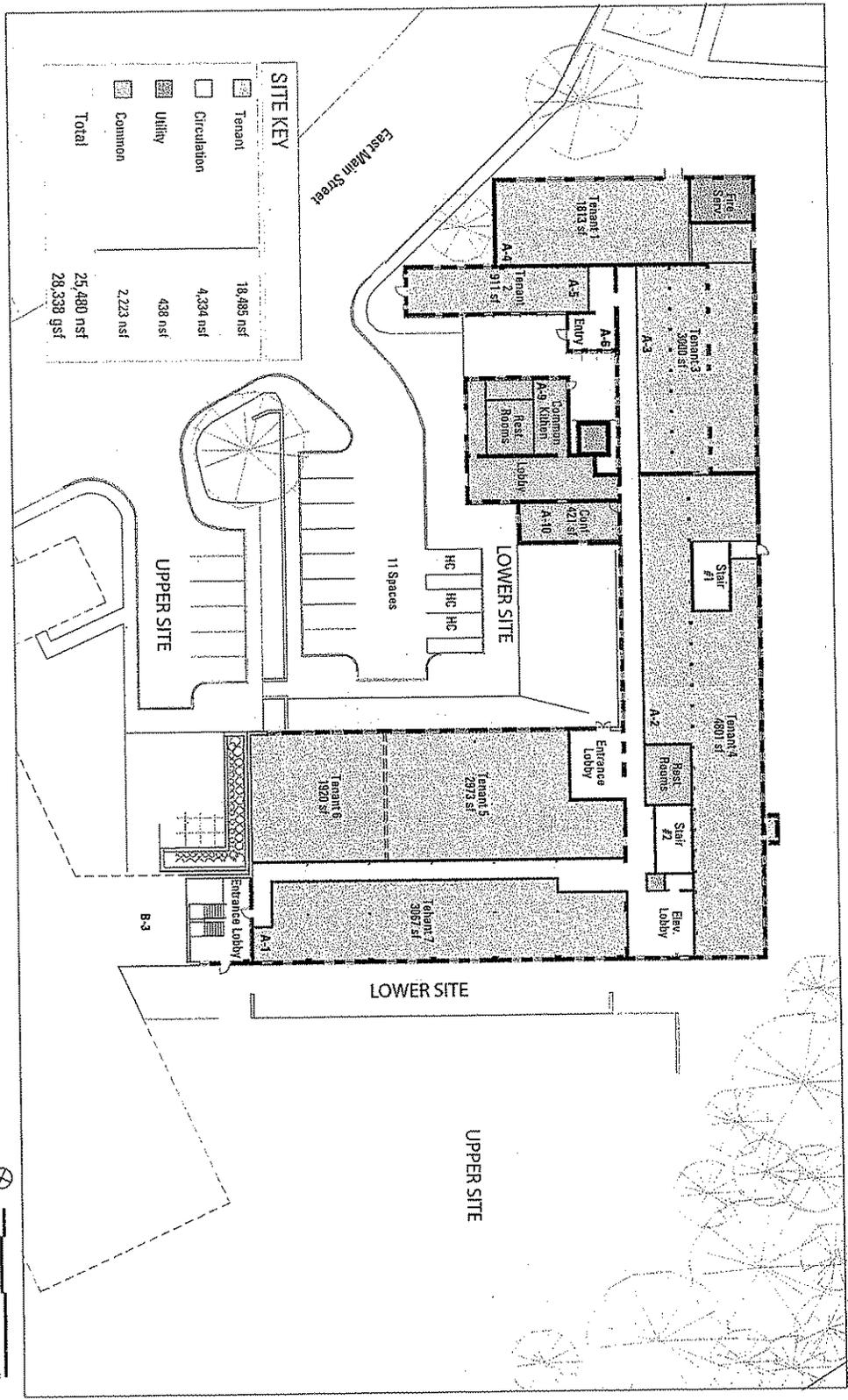
Site Plan
 OPTION TWO

2.0

DURKEE BROWN
 VERRORS WERNECKS
 ARCHITECTS
 140 BROAD STREET
 MIDDLEBOROUGH, MA 01901



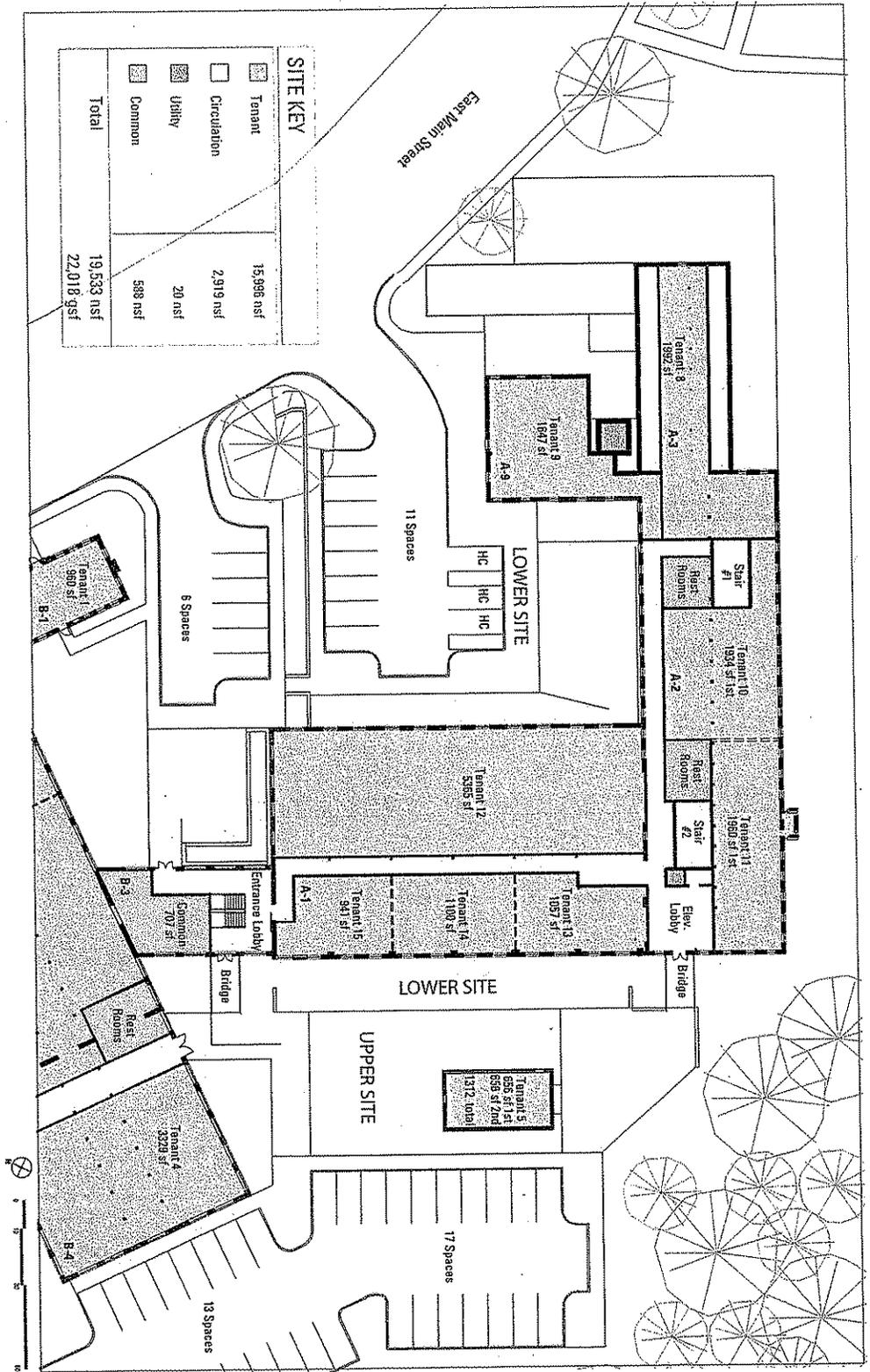
Star Mill - Walker Building Conceptual Re-Use Study
 Middleborough, MA



Building A: First Floor Plan
 OPTION TWO

Star Mill – Walker Building Conceptual Re-Use Study
 Middleborough, MA

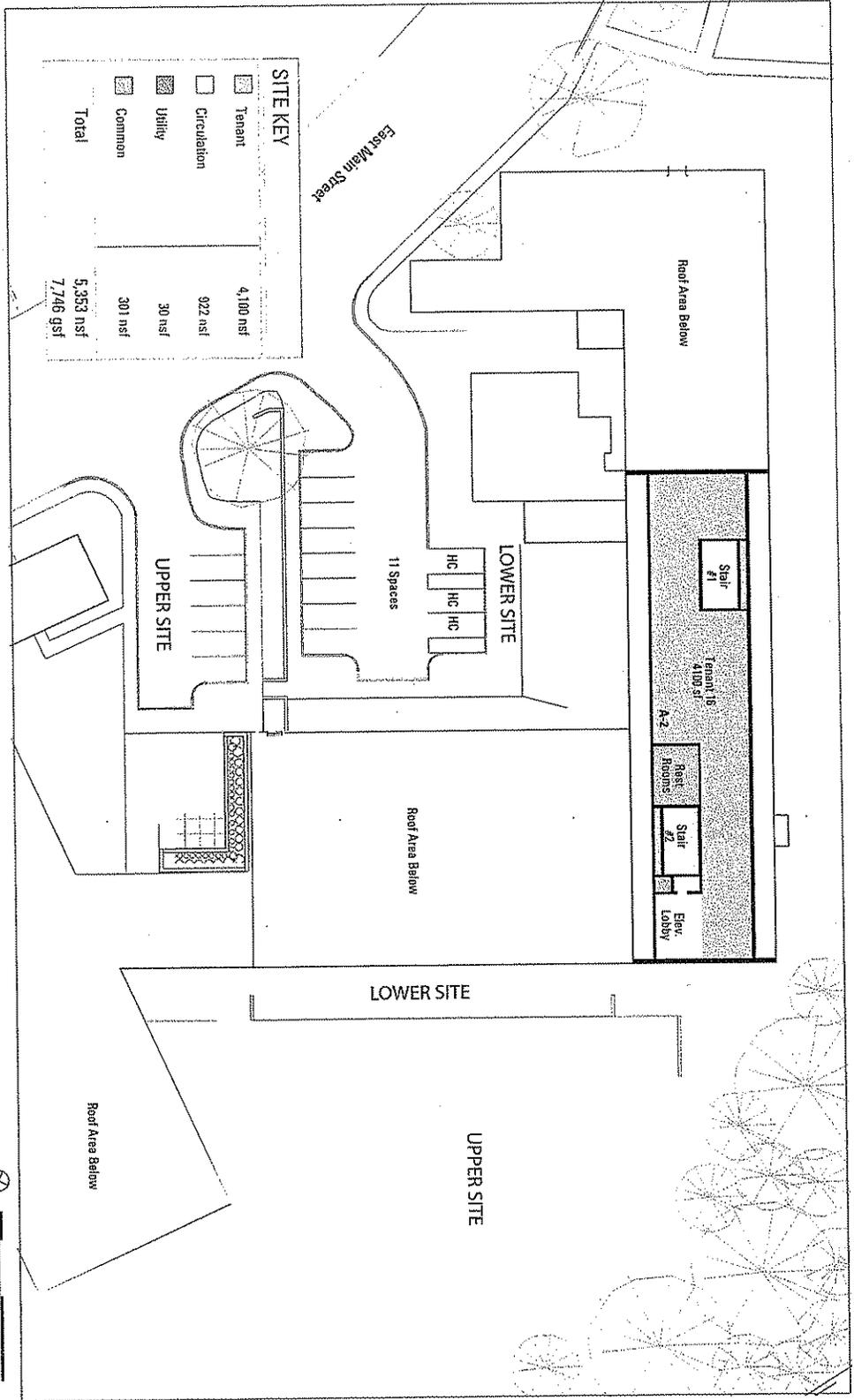
Building A: Second Floor Plan
 OPTION TWO



DUNKEE BROWN
 VIVIANO WERNERFELS
 ARCHITECTS
 140 SOUTH BROADWAY
 7th FLOOR
 BOSTON, MA 02110



Star Mill — Walker Building Conceptual Re-Use Study
 Middleborough, MA



SITE KEY

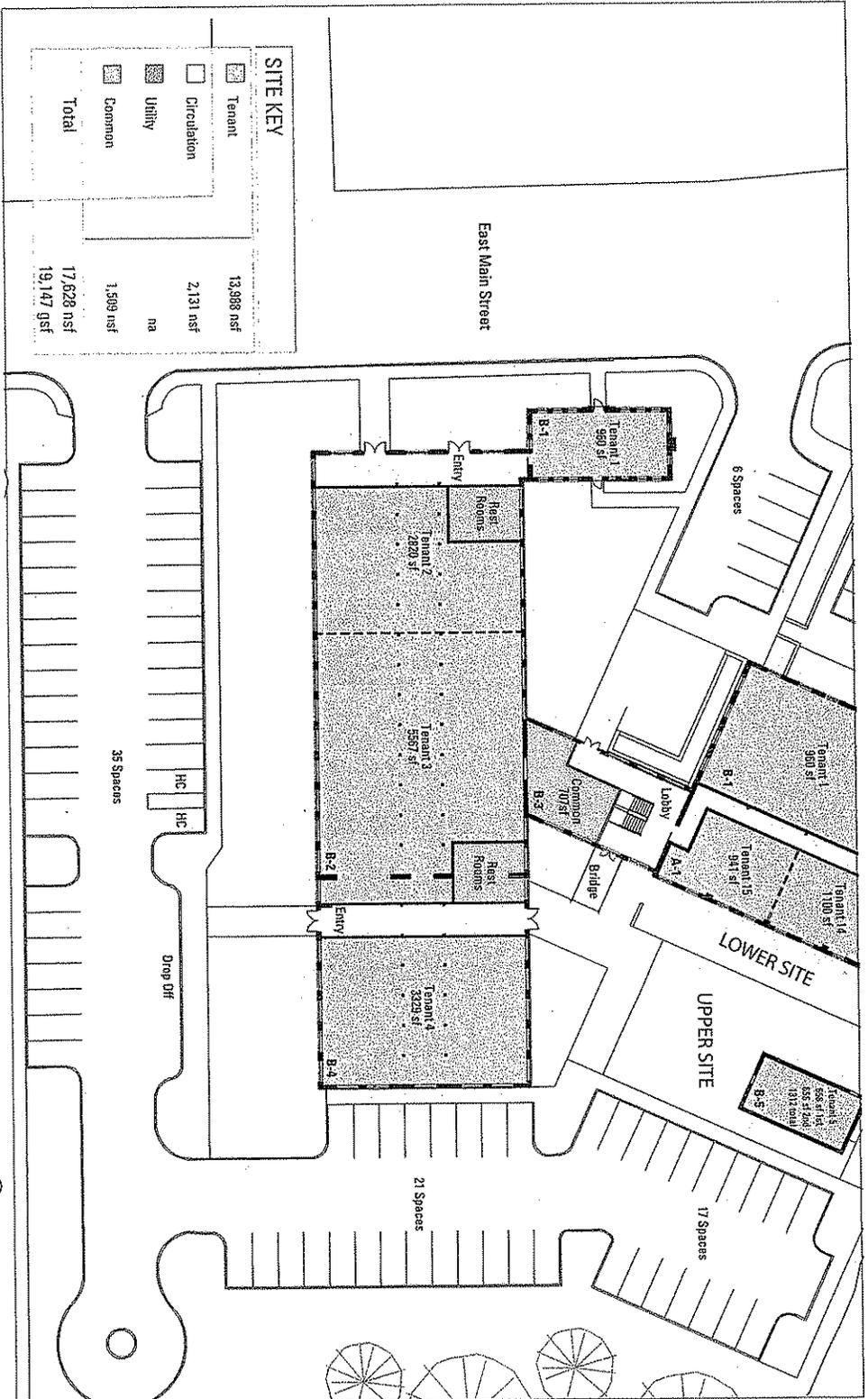
	Tenant	4,100 nsf
	Circulation	922 nsf
	Utility	30 nsf
	Common	301 nsf
	Total	5,353 nsf
		7,746 gsf

Building A: Third Floor Plan
 OPTION TWO

DUNKEE BROWN
 ARCHITECTS
 100 STATE STREET
 MIDDLEBOROUGH, MA 01901



Star Mill - Walker Building Conceptual Re-Use Study
 Middleborough, MA



SITE KEY		
	Tenant	13,988 nsf
	Circulation	2,131 nsf
	Utility	na
	Common	1,599 nsf
Total		17,628 nsf 19,147 gsf

Building B: Second Floor Plan
 OPTION TWO

2.4

DURKEE BROWN
 ARCHITECTS
 200 STATE STREET
 MIDDLEBOROUGH, MA 01901





ENGINEERING,
INC.

ENGINEERS
SURVEYORS

August 4, 2008

Town of Middleboro
Board of Selectmen
Town Hall
Middleboro, MA 02346

Re: Earth Removal Permit Application
G. Lopes Construction, Inc.
Plympton Street (Map 34, Lots 4315)
Middleboro E/R Permit #05-1
D.E.P. File No. SE 220-785
G.A.F. Job No. 03-5945

BOS:
Please Bring your
G. Lopes "plans" with you
from 9-15-08.
I have 2-3 sets
if needed.
J.

Dear Members of the Board:

On behalf of our client, G. Lopes Construction, Inc., G.A.F. Engineering, Inc. respectfully submits a request for a one year extension to the Earth Removal Permit No. 05-1 issued to G. Lopes Construction, Inc. and Red Dog Cranberry, LLC.

G.A.F. Engineering, Inc. has enclosed for your review eleven (11) copies of the following supporting documentation, along with the filing fee in the amount of \$300.00.

1. Earth Removal Permit Application.
2. Copy of Earth Removal Permit 05-1
3. Copy Deed
4. Copy of Order of Conditions issued by the Town of Middleboro Conservation Commission (D.E.P. File No. SE 220-785) and Extension Permit for Order of Conditions issued June 5, 2008.
5. Copy of Water Management Registration No. 4-25-182.31 & Certification
6. Copy of Farm Plan
7. Certified List of Abutters
8. Assessor's Location Map
9. Site Plans and checklist

Thank you for your anticipated consideration of this request and should the Board have any questions, please do not hesitate to contact our office.

Very truly yours,

G.A.F. Engineering, Inc.

William F. Madden
William F. Madden, P.E.

Copy to: G. Lopes Construction, Inc.
Middleboro Conservation Commission

Enc.

266 MAIN ST
WAREHAM, MA
02571
TEL 508.295.6600
FAX 508.295.6634

gaf@gaf-eng.com



DECAS, MURRAY & DECAS

ATTORNEYS AT LAW

132 NORTH MAIN STREET • MIDDLEBORO • MASSACHUSETTS 02346 • (508) 947-4433

GEORGE C. DECAS
DANIEL F. MURRAY
WILLIAM C. DECAS

REPLY TO POST OFFICE BOX 201
MIDDLEBORO, MA 02346-0201

HAPEHAM OFFICE:
219 MAIN STREET
(508) 295-2115

FAX (508) 947-7147

October 3, 2008

Middleboro Board of Selectmen
(via FAX#: 508-946-0058)

RE: Earth Removal By-law – permits

Dear Members:

Selectmen Rogers inquired regarding issuance of an earth removal permit in circumstances where an applicant had held an earlier permit for the same property and had not complied with the conditions and/or restrictions of the earlier permit.

I find nothing in the Earth Removal By-law or Board Earth Removal Regulations which would require the Board to deny an application for a permit when the applicant has not complied with the conditions and/or restrictions of a prior earth removal permit for the same property. Section 6 of the by-law provides that a violation of a condition or restriction of a permit shall be a violation of the by-law. Section 6 provides for remedies in the event there is a violation of a condition or restriction of a permit. I conclude that violation of a condition or restriction under a prior permit does not prohibit issuance of a new permit to the same applicant for the same property.

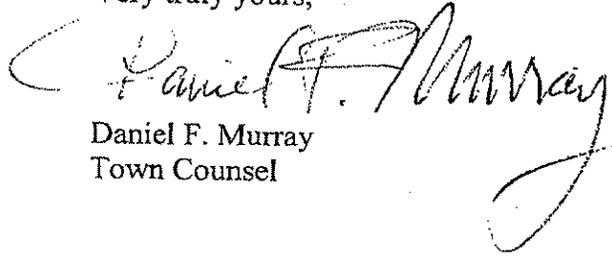
The Board is not required to issue an earth removal permit and may deny an application pursuant to Section 3 of the by-law. It seems to me that the Board may properly refuse to issue a permit if the permit applicant has violated conditions or restrictions of a prior permit for the same property.

The Board is aware that earth mining is not a permitted principal use in residence districts under the Zoning By-law. The Supreme Judicial Court's view is that earth mining which is not allowed as a principal use under zoning is permitted if it is incidental or accessory to a principal use which is permitted under zoning. My understanding is that earth removal operations in Middleborough have been allowed under zoning on the theory that earth removal was incidental or accessory to a permitted principal agricultural use, that is, the construction of cranberry bogs. I enclose a copy of a 1994 case, Henry v. Board of Appeals of Dunstable, which held that a proposed earth mining operation was not incidental or accessory to the creation of an agricultural use, a tree farm, because of the scope of the removal.

-2-

If the holder of an earth removal permit in Middleborough has not taken reasonable and timely steps to create a cranberry bog in violation of conditions, restrictions or other requirements of a permit, it could be argued that the earth mining violates the Zoning By-law because the earth mining is not in conjunction with an agricultural use. Whether there is a violation of zoning in a particular case would depend upon an analysis of the facts.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel F. Murray". The signature is written in a cursive style with a large, sweeping initial "D".

Daniel F. Murray
Town Counsel

DFM/s
Enclosure
94-337

Service: Get by LEXSEE®
Citation: 36 mass. app. ct. 54

36 Mass. App. Ct. 54, *; 627 N.E.2d 484, **;
1994 Mass. App. LEXIS 149, ***

KATHLEEN B. HENRY v. BOARD OF APPEALS OF DUNSTABLE.

No. 92-P-171

APPEALS COURT OF MASSACHUSETTS

36 Mass. App. Ct. 54; 627 N.E.2d 484; 1994 Mass. App. LEXIS 149

November 16, 1993, Argued
February 8, 1994, Decided

PRIOR HISTORY: [***1] Middlesex. Civil action commenced in the Superior Court Department on August 25, 1987. The case was heard by Robert H. Bohn, Jr., J., on a statement of agreed facts.

DISPOSITION: Judgment affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant Board of Appeals of Dunstable, Massachusetts challenged a decision of the Superior Court Department of Middlesex County (Massachusetts), which found that plaintiff resident's proposed land use was in furtherance of an agricultural use and was exempt from the town's zoning by-law under Mass. Gen. Laws ch. 40A, § 3. The board had denied the resident's request for a permit for such use.

OVERVIEW: In conjunction with planting Christmas trees on her property the resident wanted to remove large amounts of dirt in order to level the land. The resident's lot was located in a zoning district in which agricultural uses were permitted, but commercial earth removal operations required a permit. The selectman denied the permit and the board affirmed the selectman's decision. Upon the resident's appeal, the superior court reversed the board's decision. Affirming the superior court's decision, the court held that removal of the earth, which was connected to the growing of the Christmas Trees, was protected by ch. 40A, § 3. The court noted that the ultimate objective of the excavation and the removal of the soil was to prepare the land for use as a tree farm. Accordingly, the court concluded that the use was reasonably related to an agricultural use of the land fell within the protective exemption of ch. 40A, § 3.

OUTCOME: The court affirmed the superior court's decision entered in favor of the resident.

CORE TERMS: removal, earth, by-law, zoning, agricultural, cultivation, tree farm, agricultural purposes, agricultural use, agriculture, incidental, excavation, cubic yards, horticulture, suitable, planting, farming, exempt, steep, tract, cranberry bog, horticultural, tank, pond, selectmen's, proposed use, board of appeals, local zoning, zoning ordinance, dehydration

LexisNexis® Headnotes ♦ [Hide Headnotes](#)

[Real Property Law > Zoning & Land Use > Ordinances](#)
[Real Property Law > Zoning & Land Use > Special Permits & Variances](#)
[Real Property Law > Zoning & Land Use > State & Regional Planning](#)

HNI [Mass. Gen. Laws ch. 40A, § 3](#), as appearing in 1982 Mass. Acts 40, provides in part that: Nor shall any zoning ordinance or by-law prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

◆ [Hide Headnotes / Syllabus](#)

HEADNOTES:

Zoning, Agriculture, Material removal. Words, "Agriculture," "Horticulture," "Incidental."

COUNSEL: Richard W. Larkin, Town Counsel, for the defendant.

Robert J. Sherer (Francis A. DiLuna with him) for the plaintiff.

JUDGES: Present: Jacobs, Gillerman, & Porada, JJ.

OPINION BY: PORADA

OPINION

[*54] [485]** PORADA, J. The sole issue presented by this appeal is whether the plaintiff's proposed removal of 300,000 to 400,000 cubic yards of earth from a steep hill on her property in order to make that area suitable for the planting and cultivation of Christmas trees is an agricultural activity under G. L. c. 40A, § 3,¹ and, therefore, not subject to the **[*55]** provisions of the town's zoning by-law. In the plaintiff's appeal to the Superior Court from a decision of the board of appeals of Dunstable (board) denying her a permit for such use, the Superior Court judge determined that the plaintiff's proposed use of her land was in furtherance of an agricultural use and was exempt from the town's zoning by-law under G. L. c. 40A, § 3. We affirm.

----- Footnotes -----

¹ **HNI** [General Thaws c. 40A, § 3](#), as appearing in St. 1982, c. 40, provides in pertinent part: "Nor shall any [zoning] ordinance or by-law prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture"

----- End Footnotes -----

[*2]** The pertinent facts are not in dispute. The plaintiff owns about thirty-nine acres of land on High Street in Dunstable. The land is classified as forest land under G. L. c. 61 and has been under a forestry management plan since about 1983. It is mostly wooded and is characterized by hills and depressions. The entire tract has a history of use for agricultural purposes.

Several years ago, the plaintiff planted approximately 1,000 fir trees of various species on a small, level tract of her land to restore the forest and to begin a Christmas tree farm. The

farm is presently in a prototypical cultivation.

After consulting with experts, the plaintiff determined that other areas of her property were suitable for the farming of Christmas trees subject to resolving the problems caused by the steep slopes of the hills on the property. The slopes of the hills would make it difficult for customers in a "cut your own" Christmas tree operation to have easy or safe access to the trees and would make mechanized cultivation of the trees difficult.

At issue in this case is the proposed use of a five-acre portion of the plaintiff's property for the expansion of her Christmas tree farm. The site includes [***3] a steep hill, which is an esker. The plaintiff desires to level the hill to meet the general elevation of the adjacent land. She estimates that 300,000 to 400,000 cubic yards of earth would have to be removed to level the land and make it suitable for the planting and cultivation of Christmas trees. She proposes to remove the earth materials at the rate of 100,000 cubic yards annually. Any displaced sand would be used to restore and utilize an old cranberry bog on [**486] the property. Loam and topsoil would likewise be reserved for the grading of the leveled [*56] land and the planting of the trees once the necessary excavation was completed.

The plaintiff's lot is located in a zoning district in which agricultural uses are permitted, but commercial earth removal operations or the removal of "significant amounts of earth from any lot" are prohibited. The plaintiff applied for a permit to the board of selectmen to remove the crest of the steep hill on the five-acre tract in order to level the terrain to make it more accessible for customers and more suitable for the mechanized cultivation of Christmas trees. The selectmen denied the permit. The plaintiff appealed the denial to the board which, [***4] relying upon the zoning by-law provision prohibiting the removal of significant amounts of earth from a lot, upheld the selectmen's decision.

There is no question that the plaintiff's proposed, future use of this tract of land for the planting and harvesting of Christmas trees is an "agricultural" or "horticultural" use entitled to the protection of G. L. c. 40A, § 3, from the proscription of the town's zoning by-law. Since the words "agriculture" or "horticulture," as used in G. L. c. 40A, § 3, are not defined in the statute, we have given them their usual and accepted meaning, derived "from sources presumably known to the statute's enactors, such as their use in other legal contexts and dictionary definitions." *Steege v. Board of Appeals of Stow*, 26 Mass. App. Ct. 970, 971, 527 N.E.2d 1176 (1988). See also *Sturbridge v. McDowell*, 35 Mass. App. Ct. 924, 925 (1993). Webster's Third New Intl. Dictionary 44 (1971) defines agriculture as "the science or art of cultivating the soil, harvesting crops, and raising livestock" and defines horticulture as "the cultivation of an orchard, garden, or nursery on a small or large scale: the science [***5] and art of growing fruits, vegetables, flowers, or ornamental plants." *Id.* at 1093. A Christmas tree farm would appear to qualify as an agricultural or horticultural pursuit under these definitions.

The more difficult question is whether the plaintiff's earth removal project, which she claims is necessary to prepare her land for the Christmas tree farm, is protected by G. L. c. 40A, § 3. Given the fact that significant amounts of earth [*57] materials will be removed over an extended period of time and sold, the board contends that the plaintiff's use of this site amounts to nothing more than a gravel mining operation, which is neither incidental to, nor primarily or directly related to, an agricultural or horticultural activity. The board relies upon our decision in *Old Colony Council-Boy Scouts of America v. Zoning Bd. of Appeals of Plymouth*, 31 Mass. App. Ct. 46, 47-49, 574 N.E.2d 1014 (1991). In the *Old Colony* case, we found that a judge was warranted in upholding a board of appeals' decision that the removal of 460,000 cubic yards of fill over a two and a half year period where the excavation would provide substantial funds in excess of the cost of constructing [***6] a new cranberry bog, was not a use "incidental to and reasonably required in connection with construction of an approved use," a cranberry bog, under the town's zoning by-law. We said in that case the word "incidental" when used in a zoning context implies that "the use must not be the

primary use of the property but rather one which is subordinate and minor in significance." *Id.* at 48, quoting from *Harvard v. Maxant*, 360 Mass. 432, 438, 275 N.E.2d 347 (1971). We are of the opinion, however, that the *Old Colony* case is not dispositive of the issue raised in this action, because in that case we focused upon the interpretation to be given to the provisions of the local zoning by-law and did not consider the effect of G. L. c. 40A, § 3, upon the proposed use.

We are of the opinion that the test to be applied is whether the activity constitutes use of the land for an agricultural purpose. In *Tisbury v. Martha's Vineyard Commn.*, 27 Mass. App. Ct. 1204, 1205, 544 N.E.2d 230 (1989), we upheld a Superior Court judgment that the town could not prohibit the landowners from erecting a greenhouse with a 4,000-gallon fuel [***7] tank, even though the local zoning by-law limited the size of such tanks to 500 gallons, where the tank furthered an agricultural use of the property. Similarly, in a case predating the enactment of G. L. c. 40A, § 3, the Supreme Judicial Court determined that the dehydration (presumably a manufacturing process) of fodder and manure that was raised on the land or produced elsewhere for use on the land could be [*58] considered "farming" or an "accessory use[] customarily [**487] incident to" farming under a municipal zoning by-law. *Jackson v. Building Inspector of Brockton*, 351 Mass. 472, 475, 476-479, 221 N.E.2d 736 (1966). In that case, the court also held that the dehydration and sale of excess fodder and manure raised on the land was permissible as part of a permitted farming operation. *Id.* at 478.

Here, we are of the opinion that the Superior Court judge was correct in concluding that, where the ultimate objective of the excavation and removal was to prepare the land for use as a tree farm, this use was reasonably related to an agricultural use of the land and fell within the protective exemption of G. L. c. 40A, § 3. The result reached is [***8] in accord with case law from other jurisdictions that have been faced with the issue of whether an earth removal project fell within the statutory protection afforded use of land for an agricultural purpose. See *Kendall County v. Aurora Natl. Bank Trust No. 1107*, 170 Ill. App. 3d 212, 120 Ill. Dec. 497, 524 N.E.2d 262 (1988) (excavation of pond to irrigate sod that the landowners had already planted on their property was an agricultural activity exempt from the county zoning ordinance, despite contention that the owners intended to mine sand and gravel); *VanGundy v. Lyon County Zoning Bd.*, 237 Kan. 177, 699 P.2d 442 (1985) (farmer's quarrying of rock to construct pond for irrigation purposes was "agricultural purpose" within meaning of statute prohibiting regulation of land used for agricultural purposes and, thus, exempt from local regulation even though farmer was able to sell blasted rock as by-product of creating pond); *Atwater Township Trustees v. Demczyk*, 72 Ohio App. 3d 763, 596 N.E.2d 498 (1991) (construction of lake and track was deemed incidental to agricultural pursuit of raising horses and exempt from local regulation). By this decision, [***9] we do not mean to intimate that the board is precluded from prohibiting the excavation and removal of earth materials beyond what is needed for an agricultural use of the land.

Judgment affirmed.

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