

Town of Arlington



Memorandum of Understanding Re: Transfer of “Proposed Parcel” ZBA Comprehensive Permit Docket No. 3515

I. Statement of Purpose

The objective of this Memorandum of Understanding is to assist the Thorndike Place, LLC, the Town of Arlington, and _____ (hereinafter “the Parties”) in meeting common goals and expectations regarding an approximately 12.5 acre parcel of land (“the Proposed Parcel”) associated with a proposed G.L. c. 40B Development of “Thorndike Place” (Arlington Zoning Board of Appeals Dock No. 3515).

Contingent upon the grant of a comprehensive permit as submitted by Thorndike Place LLC and approved by _____ on _____ and either acceptance of conditions set forth therein or exhaustion of all appeals regarding same, the parties to this agreement share the goal that the Proposed Parcel shall be appropriately subdivided, recorded, restricted from future development, and remediated so it may be preserved and maintained as undeveloped, natural space appropriate for conservation and/or passive recreation for the benefit of the community of Arlington, especially with respect to community concerns about site development and its impact on local floodplains and environmental resource areas.¹

A. Improvement of Land Conditions

Specifically, Thorndike Place, LLC (“The Applicant”) seeks to create a residential development under a G.L. c. 40B Comprehensive Permit, subject to a decision by the Arlington Zoning Board of Appeals (“ZBA”). As part of its application, the Applicant has proposed both the donation of the Proposed Parcel to the Town of Arlington (or an appropriate third party conservation entity) and the improvement of the Proposed Parcel, which accumulated solid waste and debris from a variety of sources over several decades and has been impacted by various invasive species of flora and fauna.

B. Mitigation of Development Impacts

The Town of Arlington (“Town”) meanwhile, through its Zoning Board of Appeals, Select Board, Conservation Commission, and Health and Human Services Department received significant public comment and testimony, as well as data and analysis from its Conservation Commission forming concern around the impacts of the proposed Comprehensive Permit development on area flood control, habitat, and related environmental concerns.

¹ By entering into this Memorandum of Understanding, the parties do not waive their rights with respect to Comprehensive Permit Docket No. 3515. The Applicant does not waive its right to appeal the decision of the Zoning Board of Appeals (“ZBA”). The Town of Arlington, including the ZBA, does not waive any rights relative to its assertion of conditions or position relative to any appeal by the Applicant.

C. Mutual Desire for Improvement of Land

As such the parties agree that if the site proposed for development is indeed to be developed under a Comprehensive Permit Docket No. 3515, preservation and improvement of the Proposed Parcel is important for addressing both community concerns and the Applicant's goals for their project. This Memorandum of Understanding outlines in further detail the respective responsibilities of the Parties in achieving such mutual desire for improvement of the land and transfer.

II. Parcel Division, Merger, and Restriction

A. Current Parcel Descriptions

As of the date of a Decision on Comprehensive Permit Docket No. 3515, there are three (3) parcels relevant to the Comprehensive Permit Application and this MOU, each owned by "Arlington Land Realty, LLC" of 222 Berkley Street, Suite 1450, Boston MA 02116. These parcels are identified as follows:

- 0 Lot Concord Tpke, Arlington MA, Parcel ID No. 14-2-6, a 217,155 Sq. Ft. parcel presently listed as "Potentially Developable Land" per Arlington Assessor Data (identified herein as "Southeastern Parcel");
- 0 Lot Concord Tpke, Arlington MA, Parcel ID No. 13-12-5.A, a 273,121 Sq. Ft parcel Ft. parcel presently listed as "Potentially Developable Land" per Arlington Assessor Data (identified herein as "Middle Parcel");
- 0 Lot Concord Tpke, Arlington MA, Parcel ID No. 16-8-8, a 117,612 Sq. Ft parcel (identified herein as the "Northwestern Upland Parcel");

B. Parcel Division/Merger

Prior to any transfer of land, issuance of a building permit in connection with ZBA Docket No. 3515, or within three (3) years of a Decision on ZBA Docket No. 3515 being recorded (whichever is first in time), and as soon as possible following a decision from the ZBA and expiration or exhaustion of any appeals the Applicant or their authorized agents shall survey and appropriately divide and/or merge, and record portions of the Northwestern Upland, Middle, and Southeastern parcels such that portions of the Northwestern Upland Parcel shall either be merged with the Middle Parcel, or portions of the Northwestern Parcel, the Middle Parcel and the Southeastern Parcel are all merged together to form one to two parcels forming an approximately 12.5 acre parcel or parcels referenced throughout this MOU as the "Proposed Parcel."

Property title, survey, and any and all property boundary details shall be provided to the Department of Planning and Community Development and Town Legal Department prior to closing and recording of any land transfer.

C. Development Restrictions Recorded with Division/Merger

Prior to any transfer of land, issue of a building permit in connection with ZBA Docket No. 3515, or within three (3) years of a Decision on ZBA Docket No. 3515 being recorded (whichever is first in time) the Applicant shall also record with the newly formed or altered Proposed Parcel a deed restriction in perpetuity to prohibit the development of the Proposed Parcel by any land owner. The restriction may permit improvements

to the land consistent with passive recreation, conservation, and/or use as park and recreation space, but shall prohibit all commercial, industrial, and residential development of any kind on the Proposed Parcel.

The restriction to be recorded shall be submitted to the Department of Planning and Community Development and/or the Town of Arlington Legal Department fourteen (14) days prior to recording for comment to ensure consistency with this MOU.

III. Environmental and Site Condition Survey and Assessment

This section of the MOU outlines the assessments that the Applicant shall conduct prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515. These assessments relate to the current condition of the Proposed Parcel and will determine any required clean-up or remediation work, outlined in Section IV. The Applicant shall coordinate with the Town and submit all relevant assessment reports to the Town as described below.

A. Phase I 21E Environmental Assessment

Prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515, the Applicant or its agents shall perform a Phase I Environmental Assessment of the Proposed Parcel consistent with the requirements of M.G.L. c. 21E and Environmental Protection Agency standards for Phase I Assessments, including All Appropriate Inquiry Final Rule codified in 40 C.F.R. Part 312.

The results of the Phase I 21E Assessment shall be provided to the Town's Department of Planning and Community Development, Conservation Commission, and Legal Department. The results of the Phase I 21E Assessment shall determine the necessity of a possible Phase II 21E Investigation (III B).

B. Phase II 21E Environmental Investigation

Should any findings occur relative to III A, then prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515, the Applicant or its agents shall also complete, if required, a Phase II Environmental Investigation of the Proposed Parcel consistent with the requirements of M.G.L. c. 21E to identify oil or other hazardous waste in soil or groundwater.

The results of the Phase I 21E shall be provided to the Town's Department of Planning and Community Development, Conservation Commission, and Legal Department.

C. Non-Hazardous Solid Waste Assessment

In addition to the foregoing, prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515, the Applicant or its agents shall also perform a survey to identify the nature and extent of non-hazardous solid waste, including but not limited to:

[list suspected conditions from Rt. 2 construction and dumping]: Construction debris, pavement debris,

If a third party has entered an agreement to receive the Proposed Parcel, and if approved by the third party, the Applicant can post a bond of appropriate value to conduct the non-hazardous solid waste assessment.

The results of the Non-hazardous Solid Waste Assessment shall be provided to the Town's Department of Planning and Community Development, Conservation Commission, and Legal Department in a report along with a good-faith estimate of costs to remediate conditions identified therein.

D. Invasive Species Assessment and Proposed Restoration Plan

In addition to the foregoing, prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515, **the Applicant or its agents** shall also perform an invasive species assessment to identify the nature and extent of invasive species of flora and fauna. As part of the assessment, a preliminary restoration planting plan shall be proposed. If a third party has entered an agreement to receive the Proposed Parcel, and if approved by the third party, the Applicant can post a bond of appropriate value to conduct the invasive species assessment and develop a proposed restoration plan.

The results of the Invasive Species Assessment shall be provided to the Town's Department of Planning and Community Development, Conservation Commission, and Legal Department in a report along with a good-faith estimate of costs to remediate conditions identified therein.

The Department of Planning and Community Development and Conservation Commission shall be provided opportunity to comment upon any the Invasive Species Assessment and proposed restoration planting plan.

IV. Environmental Remediation, Non-Hazardous Waste Clean-up, and Invasive Management

This section of the MOU outlines the remediation and clean-up work that the Applicant shall conduct prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515. The specific remediation and clean-up work shall be determined based on the results of Section III. The Applicant shall coordinate with the Town and submit all relevant information to the Town as described below. If a third party has entered an agreement to receive the Proposed Parcel, and if approved by the third party, the Applicant can post a bond of appropriate value to conduct the remediation and clean-up work.

A. 21E Condition Remediation

Should any findings occur relative to III A and B, prior to transfer of the Proposed Parcel, the Applicant shall ensure that any environmental contamination discovered by 21E Phase I or II assessments shall be reported, remediated, or otherwise managed in an appropriate response action outcome ("RAO") with the Massachusetts Department of Environmental Protection in a manner supervised by a Licensed Site Professional (or other professional qualified to perform or supervise relevant clean-up activities) to eliminate any contamination from the Propose Parcel.

B. Non-Hazardous Solid Waste and Invasive Species Management

The Applicant shall provide sufficient funds to establish an escrow account to be utilized for non-hazardous solid waste clean-up and invasive species management, per the approved Comprehensive Permit.

i. Non-Hazardous Solid Waste Removal

Prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515, the Applicant shall establish an escrow account or other appropriate restricted fund for the removal and

disposal of non-hazardous solid waste and other environmental conditions identified in the Non-Hazardous Waste Assessment sufficient to remediate a list of conditions enumerated herein:

[list conditions appropriate for remediation including solid waste and debris removal, berm and culvert clearance, etc.]; and further

ii. Invasive Species Removal and Native Plantings

Prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515, the Applicant shall establish an escrow account or other appropriate restricted fund for removal of invasive species and planting of native species per the preliminary restoration planting plan.

The Applicant shall establish the escrow account or other appropriate restricted fund in the following amounts not to exceed \$500,000 to be deposited as follows:

1. \$250,000, upon the transfer of land; and
2. \$25,000, each year for at least 10 years, or until the Owner, Transferee, Town and LSP and/or other specialist agree that the site is sufficiently remediated.

Mitigation funds shall be employed at the sole discretion of the party to whom the Proposed Parcel is transferred. In the event that the Proposed Parcel is to be transferred to a private or public Third Party other than the Town of Arlington, said party agrees to develop a remediation plan in cooperation with the Town's Conservation Commission. After 11 years from the date of transfer, any unexpended funds in escrow or other appropriate restricted account shall be returned to the Applicant or their designee.

V. Encampments of the Unsheltered and Related Refuse

This section of the MOU outlines the assistance that the Applicant shall provide for the unsheltered residents currently residing in the Proposed Parcel, as well as the clean-up work that the Applicant shall conduct prior to any transfer of land or issuance of a building permit in connection with ZBA Docket No. 3515. This section also outlines the assistance that a possible third party shall provide for unsheltered residents who move to the Proposed Parcel during construction.

A. Pre-Transfer Assistance to the Unsheltered and Refused Cleanup

Prior to transfer of the Proposed Parcel, the Applicant shall to the maximum extent feasible work with the Arlington Board of Health and Health and Human Services Department, the Arlington Police Department, and the Somerville Homeless Coalition to humanely relocate unsheltered persons living on the Proposed Parcel. Following successful relocation, the Applicant shall further remove the extent feasible remaining encampment refuse and personal property at their sole direction and expense, including, but not limited to drug paraphernalia waste.

B. Post-Transfer Assistance to the Unsheltered and Refused Cleanup

To the extent applicable, any Third-Party Transferee with ownership and control of the Proposed Parcel also commits to working in concert with the Applicant and the Arlington Board of Health and Health and Human Services Department, the Arlington Police Department, and the Somerville Homeless Coalition to humanely relocate any unsheltered persons residing in or on the Proposed Parcel during the construction phase of any c. 40B development of the Upland Parcel.

IV. Proposed Timeline

In order to ensure the success of this MOU, the Parties proposed the following non-binding timeline for the foregoing activities and obligations.

[insert timeline for each stage]

TOWN OF ARLINGTON

<i>Name and Position</i>	<i>Phone Number, Email</i>
<i>Signature of Designee</i>	<i>Date</i>

<i>Name of Primary Contact</i>	<i>Phone Number, Email</i>

THORNDIKE PLACE, LLC

<i>Name and Role of Thorndike Place LLC</i>	<i>Phone Number, Email</i>
<i>Signature of Organization/Institution Designee</i>	<i>Date</i>

<i>Name of Primary Contact</i>	<i>Phone Number, Email</i>

THIRD PARTY TRASNFEREE

<i>Name and Role of Third-Party Designee</i>	<i>Phone Number, Email</i>
<i>Signature</i>	<i>Date</i>

<i>Name of Primary Contact</i>	<i>Phone Number, Email</i>

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Approved as to Form:	
Signature	Date
Douglas W. Heim, Town Counsel	