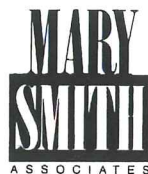
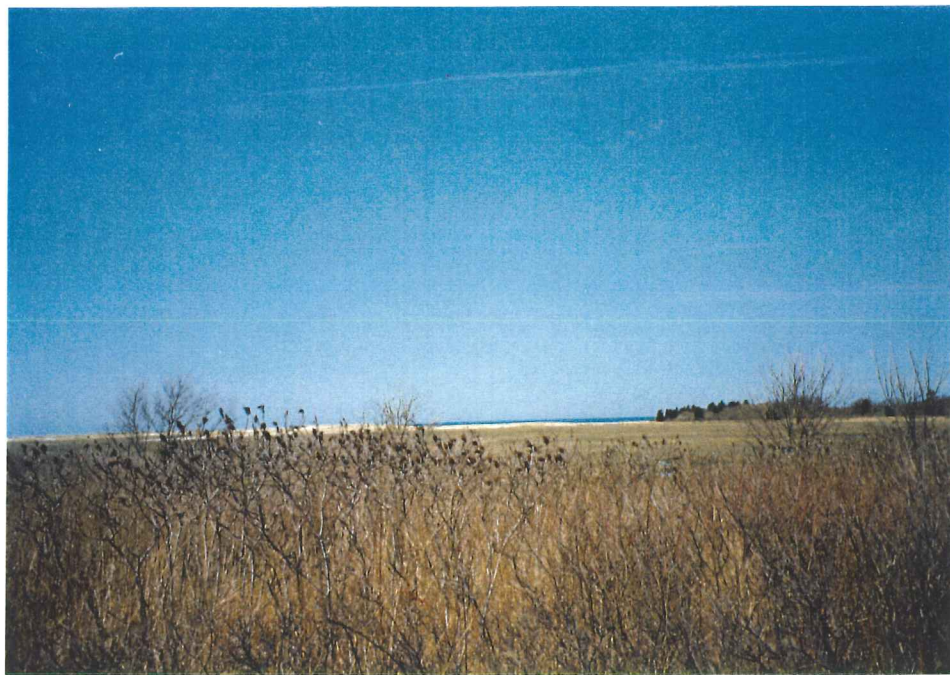




DRUMMER BOY PARK



MASTERPLAN REPORT, BREWSTER, MA, SPRING 1995



Mary Smith Associates, P.C.
Landscape Architects & Planners
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We would sincerely like to thank the following individuals for all of their hard work and participation in this project.

The Drummer Boy Park Advisory Committee Members:

George Flemming, Chairman

Arthur Chapin

Louise Crocker

R. Christine Durgin

Duane Sawhill

David Thyng

Charles Sumner

We would also like to thank the following for all of their help in researching and completing this study.

Jillian Douglas, Liana Rasmussen, Janine Perry, Mary Louise and Ruth Eddy, Bill Neilson, Paul Bowker, Susan Lindquist, Barbara Brewer, the All Citizens Access Committee and the Playground by the Bay Committee. The topographic plan used as a basis for our work was produced by Bennett & O'Reilly Inc. of Brewster, Massachusetts. There were a great many kind and helpful citizens that are not mentioned here by name, but we sincerely appreciate your help and hospitality over these last few months.

Mary Smith Associates was engaged by the Drummer Boy Park Advisory Committee to develop a masterplan for the Drummer Boy Park in Brewster MA. This 17 acre park in the western part of Brewster holds a special place in hearts of the residents and many people are concerned with the future uses of the park.

The master plan is intended to accommodate:

- The bandstand concerts
- “Festival-type” uses, such as the Historic Society’s Antique Fair and the Brewster in Bloom Festival
- The playground
- Maintain the park-like atmosphere

The challenge has been to locate all of these activities so that they will not conflict with one another and to preserve and, in fact, enhance the view of the bay.

The committee’s program for use and activity indicated that we look at the following:

- The existing location of the bandstand
- Walking/Hiking Paths
- Where to locate the playground
- Gift Shop - Include its improvement to provide public rest rooms and a small kitchen. Alternatively, consider option to remove the building.
- Residence Building - Include option to renovate and repair structure; another option to move and renovate structure; final option would be the removal of this structure.
- Develop use option to facilitate use of property for large-scale activities such as the concert series and Historical Society fund-raisers.
- Picnic areas
- Trash and recycling containers
- Various parking facility alternatives
- Natural open space

The current uses of the site are “festival type” events like Brewster in Bloom, the Antique Show and Fair sponsored by the Brewster Historic Society, and the Sunday night band concerts in the summer months.

To develop this masterplan we researched the history of the site, performed a Site Analysis and a Use Analysis, created a map of opportunities and constraints for developing activities in the park, considered the program provided by the committee and developed six different schemes for a masterplan. After reviewing the six schemes with the committee we produced the masterplan that was presented at a public meeting on April 6, 1995. With further refinement this plan was presented to the town meeting on May 1, 1995 as the committee's Masterplan for the Drummer Boy site.

Site Analysis

See Site Plan L-1

Views

The sweeping vista of Cape Cod Bay from this site makes a lasting impression on any visitor to this site. This is one of the only views out to the Bay afforded to travelers on route 6A through Brewster. The locations of the view sheds from the street are indicated on the Site Analysis Plan.



Plant Materials

There are many plant communities on this site. The forest is made up of a mixture of White Pines, Pitch Pines, Red Oaks, White Oaks, Eastern Red Cedars, Cherries and understory plants. The Bayberry thicket area contains Northern Bayberry, Blueberry, Cat Briar, and Sumac. Approximately half of the site is covered by turfgrass maintained as a

lawn. There are two types of wetlands on site. There is a small freshwater bog in the forest and the north edge of the site borders on a large salt marsh that makes up the edge of Cape Cod Bay.



Existing Buildings

Three existing buildings are located in the Drummer Boy Park. The condition of the existing residence and vacant gift shop have been evaluated by the committee. Their findings appear later in this report. The Bandstand / Gazebo is a relatively new addition to the park donated by the Brewster Board of Trade.

Wetland and Flood Zones

Along the north border of the site is the salt marsh. There is no survey available that identifies the "top of coastal bank". The Brewster Conservation Commission will treat the 12' contour as the top of coastal bank until a definitive survey locates it on this site. From site observations the top of coastal bank does not seem to be in the same location as the 12' contour. The bank seems closer to the salt marsh. The 12' contour and the 100' buffer zones are indicated on the site analysis.

Soils and Slopes

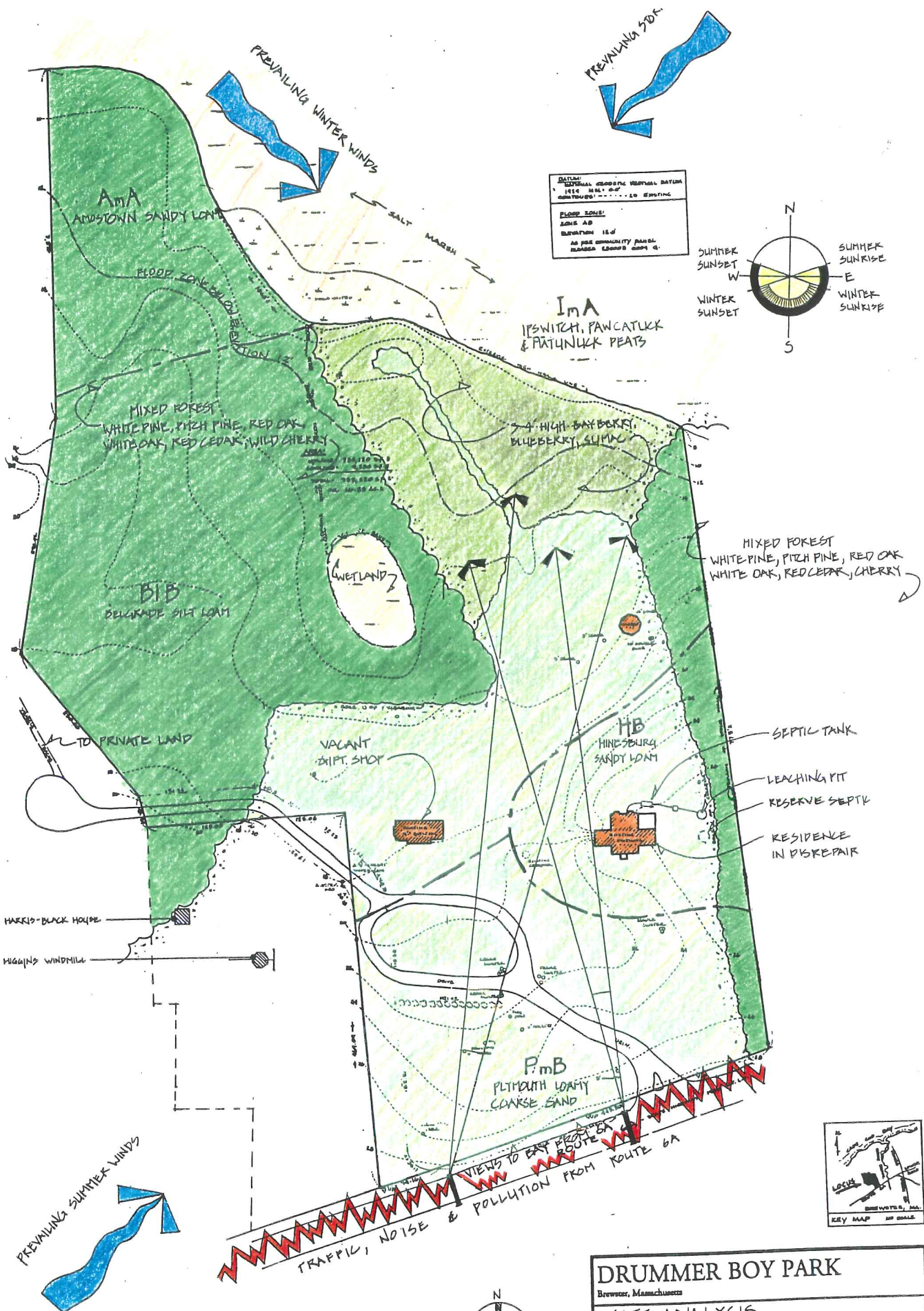
According to the soils survey of Barnstable County, there are five different types of soil on the Drummer Boy site. They are, from the south to the north of the site; Plymouth Loamy Coarse Sand, Hinesburg Sandy Loam, Belgrade Silt Loam, Amostown Sandy Loam and Ipswitch, Pawcatuck and Pawunuck Peats. The peat soils are located in the salt marsh and can not be disturbed. All of the upland soils have severe limitations for development of septic systems. The only soil on the site that can contain a septic system is the Hinesburg Sandy Loam where the existing septic system is located. The high water table and limited permeability restrict its use for septic systems, but enlarging the absorption field helps to overcome its limited permeability. All of the upland soils on the site are well suited for forest, meadow and lawn uses. The slopes on site are gently rolling between 0% and 8%.

Sun and Wind

Approximately half the site is in the full sun all day long. The winds are predominately from the west. Winter winds are from the north west except in the case of a "Nor-Easter" winter storm. The summer breezes are out of the south west during the day and become onshore breezes as the warm air rises in the evenings.

Wildlife

The wildlife on this site is comprised mainly of small mammals, birds, amphibians and insects. Deer tracks in an area of disturbed soil indicate the occasional passing through of larger animals.



BY FROM 9-1-99 PLAN
 SANNETT & O'REILLY, INC.

Use Analysis

See Site Plan L-2

The site is currently the home of “festival type” events such as, Brewster in Bloom, the Antique Show and Fair sponsored by the Brewster Historic Society, and the Sunday night band concerts in the summer months.

Buildings

Currently the Bandstand is the only building on site that is used. The Residence seems to be used for storage and the gift shop is vacant.

Annual Events

There are several “festival type” events that occur on the site each year. The event displays are set up in the area between the street and the driveway circle. Parking occurs on the grass in front of the residence and between the gift shop and residence.

Bandstand

The site plays host to a very popular series of band concerts on Sunday evenings during the summer months. During band concerts parking occurs on the grass all across the front of the site.

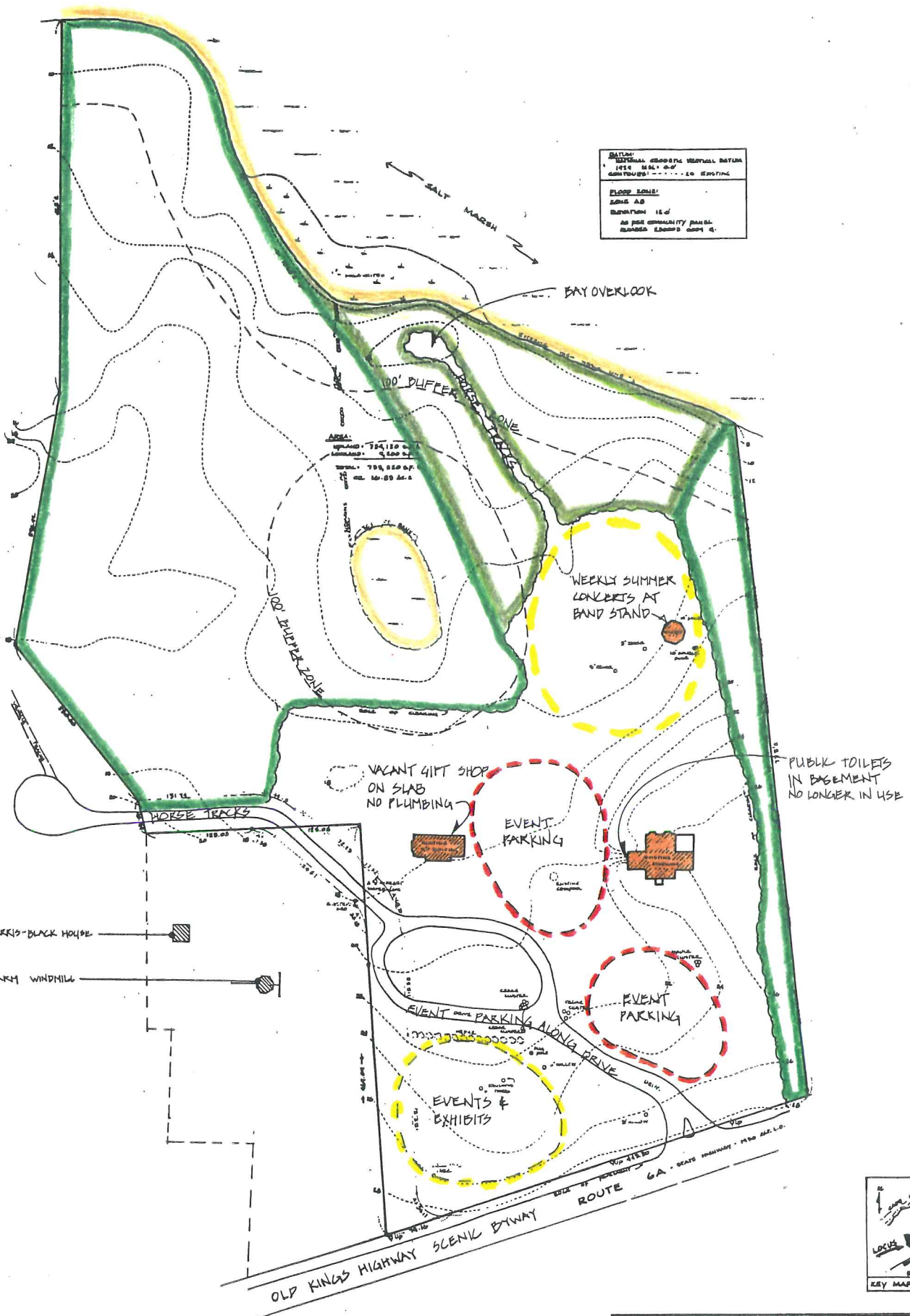


Use of the driveway

The driveway provides access to the Historical Society's property as well as neighboring properties to the west. Frequently the driveway will be used as parking for one or two cars of visitors to the park.

History

The use of this site has a very interesting history. Before the 1820s a large portion of the site was covered by saltworks. The U.S. Coast Survey of 1868 indicates some still remaining saltworks, a little pasture land and no trees. A 1938 aerial photograph shows all pasture and no trees on the site. The existing forest is no more than 50 years old, and possibly even younger. Tony McGowan purchased the land in the 1950s before it was subdivided into house lots. He lived in the residence and operated the Drummer Boy Museum. The Town of Brewster purchased the land in 1988. Later the museum was demolished and the gift of the bandstand was accepted.



KEY FROM 9-1-99 PLAN
BY BENNETT & O'REILLY, INC.



<h2>DRUMMER BOY PARK</h2> <p>Beverly, Massachusetts</p>		SCALE: As Shown DATE:
<h3>USE ANALYSIS</h3>		<h1>L-2</h1>
<p>MARY SMITH ASSOCIATES</p>	<p>MARY SMITH ASSOCIATES, P.C. LANDSCAPE ARCHITECTS & PLANNERS 30 CHESTNUT STREET QUINCY, MA 02169 (617) 778-4717 - Fax (617) 778-7653</p>	

Opportunities and Constraints

See Site Plan L-3

After examining the committee's program, the site analysis and the use analysis, a series of possible opportunities and constraints to development were compiled. There are two major constraints to development on the site. The first is the fragile wetlands that need to be protected. No development can take place within the 100 foot buffer zone of the wetlands without conservation commission permission. The second constraint are the poorly drained soils. The only soil that can provide adequate drainage for a septic system is the Hinesburg Sandy Loam.

Given these constraints, there are still a great many opportunities to enhance and preserve the open character of the park. The following are a few of the opportunities identified on the plan.

The opportunity to:

- Create a more informal setting with the removal of the hedge and partial removal of the circular drive.
- Renovate the giftshop, add public toilets and connect to the existing septic system.
- Improve views to bay by removing all buildings and restoring grades to predevelopment levels.
- Repair and improve public toilets on first floor of existing residence and abandon those in basement.
- Preserve open character of site with proper maintenance and selective clearing.
- Create an open informal edge by selectively adding or removing vegetation.
- Improve views across marsh by selectively cutting spaces into the thicket at edge.
- Gain visual access to the bog with selective clearing and pruning.
- Improve views to bay with selective clearing and pruning.
- Conceal new development by tucking it into woods.

OPPORTUNITY TO IMPROVE VIEWS ACROSS MARSH BY SELECTIVELY CUTTING SPACES INTO BRUSH AT EDGE.

DATA	
NATURAL GEODESIC SURVEY DATUM	
1916 M.S.L. 0.0'	
CONVERTED TO 1985 ELEVATION	
PLANT ZONE	
ZONE A-D	
ELEVATION 15.0'	
AS PER COMMUNITY PANEL	
PLANTED 1980'S AND 90'S	

NO BUILDING WITHIN 100' WETLAND BUFFER ZONES OR FLOOD PLAIN.

OPPORTUNITY TO CREATE AN OPEN INFORMAL EDGE BY SELECTIVELY ADDING OR REMOVING VEGETATION.

OPPORTUNITY TO PRESERVE OPEN CHARACTER OF SITE WITH PROPER MAINTENANCE & SELECTIVE CLEARING.

HINSEBURY SANDY LOAM - ONLY SOIL ON SITE SUITABLE FOR SEPTIC.

OPPORTUNITY TO REPAIR & IMPROVE PUBLIC TOILETS ON FIRST FLOOR & ABANDON THOSE IN BASEMENT.

OPPORTUNITY TO IMPROVE VIEW TO BAY BY REMOVING BUILDINGS & RESTORING GRAPES TO PREDEVELOPMENT LEVELS.

OPPORTUNITY TO RENOVATE GIFTSHOP, ADD PUBLIC TOILETS & CONNECT TO WORKING SEPTIC SYSTEM WITH PUMP.

OPPORTUNITY TO GAIN VISUAL ACCESS TO BAY WITH SELECTIVE CLEARING & PRUNING

OPPORTUNITY TO IMPROVE VIEWS TO BAY WITH SELECTIVE CLEARING & PRUNING

OPPORTUNITY TO CONCEAL NEW DEVELOPMENT BY "TUCKING INTO WOODS"

OPPORTUNITY TO CREATE MORE INFORMAL SETTING WITH THE REMOVAL OF HEDGE & PARTIAL REMOVAL OF CIRCULAR DRIVE.

HARRIS-BLACK HOUSE

HIGGINS WINDMILL

SURVEY FROM 9-1-99 PLAN BY BENNETT & O'REILLY, INC.

SCALE IN FEET



DRUMMER BOY PARK Brewster, Massachusetts		
OPPORTUNITIES & CONSTRAINTS		
	MARY SMITH ASSOCIATES, P.C. LANDSCAPE ARCHITECTS & PLANNERS 30 CHESTNUT STREET QUINCY, MA 02169 (617) 777-4717 • Fax (617) 777-7633	SCALE: As Shown DATE: 3-27-95
		L - 3

Based on our opportunities and constraints plan and the program from the committee, Mary Smith Associates developed six different schemes for the park.

Schemes 1- 6

See Corresponding Site Plan Schemes 1-6

Scheme # 1

1. Open views through site by removing both buildings.
2. Keep development on the east side of park.
3. New Visitor's Center located near the street looks like a house.
4. Playground located at the top of the hill with paths connecting to loop.
5. Cut back the forest to expose the bog. Create a boardwalk over the bog.
6. Event space stays in front. Primary event parking in the woods - secondary event parking in the meadow.
7. Plant a few great trees to separate the two lawn areas.

Scheme # 2

1. Open two views to the water.
2. Repair residence foundation and update public toilets on the first floor. Abandon toilets in basement.
3. Remove gift shop building.
4. Playground at the front of the site. Four foot picket or open fence for safety.
5. Accessible stone dust path system to open picnic area.
6. Cut back large swath through woods. Leave forest around the bog in the center of the site.
7. Primary event parking in woods and secondary event parking in open space.

Scheme # 3

1. Eliminate hard edges at field tree line by selective clearing and planting more trees.
2. Develop internal views including an open view to the bog.
3. Develop paths, trails and teaching areas.

4. Expand the existing residence building and add the handicap accessible walk, landing and furnished overlook, and new first floor bathrooms.
5. The playground and the play field parking area adjacent to each other. The playground is tucked partly into the woods. This alignment created as a multi-use space.
6. Expand the view to the bay by removing the small gift shop and cutting back some woods.
7. Keep gazebo/ bandstand in place.
8. Park 300 - 400 cars for events.
9. Eliminate part of circular drive to create a meandering, less formal drive.

Scheme # 4

1. Increase the width of the view to Cape Cod Bay from the road and provide new views within site.
2. Open woods up at the north (Bay side) of site, exposing the stone wall.
3. Playground is tucked back into the wooded area.
4. Repair and renovate existing residence into a Visitor's Center with accessible first floor bathrooms. Event parking clustered near the Visitor's Center for approximately 300 cars.
5. Remove the gift shop and add overlook and handicap accessible paths.
6. Eliminate park of driveway circle.
7. Use bog and woods for trails, boardwalks, and teaching areas.
8. Open up wooded edges by selective clearing, creating softer, shady areas for picnics.
9. Keep gazebo in place.

Scheme # 5

1. Remove both buildings, no new buildings or bathrooms added.
2. Soften the edges of the woods by clustering trees. Selective clearing to prevent straight "wood-lot" edges.
3. Open up the views within and across the site.
4. Create a new "field" for play or to park 100 cars during an event.
5. Plant some trees to screen views to the playground, tucked in next to the field.

6. Create trails around the bog and through the woods.
7. There is a more open view to the bay from the street.
8. Park 350 - 400 cars for special occasions.
9. Eliminate part of circle drive.
10. Handicap path to overlook with benches.

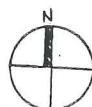
Scheme # 6

1. Open views to the bay by removing both existing buildings
2. New Visitor's Center hidden from road by plantings. The views to the bay from both sides of the new building are expanded.
3. Events space to be on both sides of driveway.
4. The playground is tucked into the woods. Create an open swath to water for views.
5. New parking for Visitor's Center near new building off circle.
6. Path and picnic overlooks along marsh edge.
7. The cranberry bog remains surrounded by woods and is accessible by path and by boardwalk.
8. Handicap accessible overlook with benches and shade trees at the top of the hill.
9. New views created within site.



SURVEY FROM 9-1-99 PLAN
 BY BENNETT & O'REILLY, INC.

SCALE IN FEET
 0 10 20 30 40 50 60 70 80 90 100 110 120



DRUMMER BOY PARK

Brewster, Massachusetts

SCHEME #1



MARY SMITH ASSOCIATES, P.C.
 LANDSCAPE ARCHITECTS
 & PLANNERS
 50 CHRISTY STREET
 QUINCY, MA 01906
 (508) 777-7117 • FAX (508) 777-7118

SCALE: As Shown

DATE:

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DATE: 10/10/00
BY: MARY SMITH ASSOCIATES, P.C.
SCALE: 1" = 40'
DATE: 10/10/00
BY: MARY SMITH ASSOCIATES, P.C.
SCALE: 1" = 40'

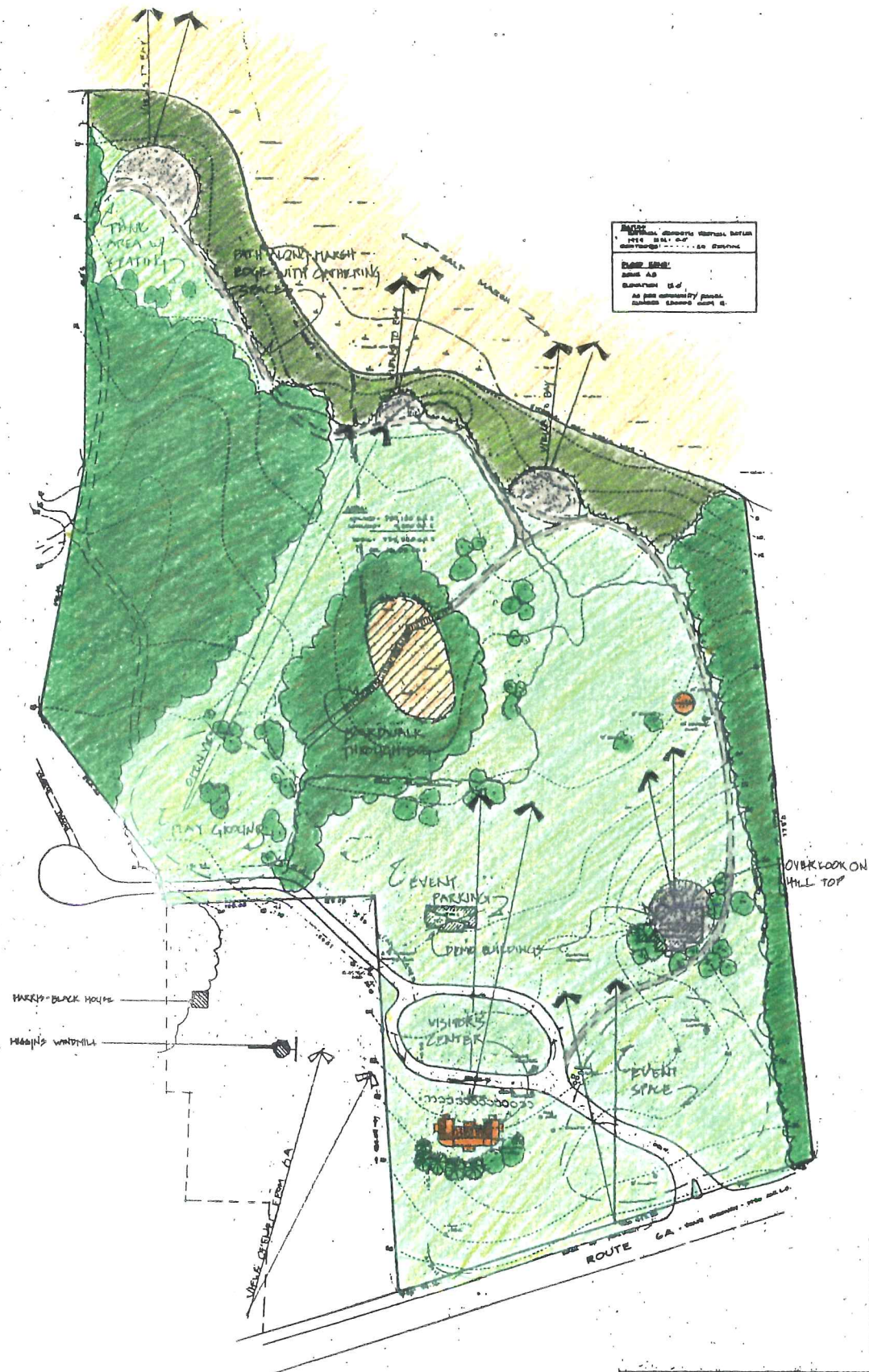
SURVEY FROM 9-1-99 PLAN
 BY BENNETT & O'REILLY, INC.

SCALE IN FEET
 0 50 100 150



DRUMMER BOY PARK Dorchester, Massachusetts	
SCHEME #2	
	MARY SMITH ASSOCIATES, P.C. LANDSCAPE ARCHITECTS IN PLANNING 80 COUNTRY STREET QUINCY, MA 01906 508/777-8777 • FAX 508/777-7000
	DATE: _____ SCALE: As Shown L-





DRUMMER BOY PARK	
Boston, Massachusetts	
SCHEME # 6	
	MARY SMITH ASSOCIATES, P.C. LANDSCAPE ARCHITECTS 10 CHURCH STREET BOSTON, MA 02108 617-552-1111 • FAX 617-552-1112
	SCALE: 1/4" = 10' - 0" DATE: _____ L

SURVEY FROM 9-1-99 PLAN
 BY BENNETT & O'BRIEN, INC.

Masterplan

The committee chose which opportunities to pursue, reviewed all of the schemes and made recommendations for refinement. Following is the committee's recommendation with regards to the existing buildings.

The committee reviewed the condition of the former residence building and the gift shop building. A cost analysis was performed by David Thyng, Brewster's building commissioner and Arthur Chapin, a professional structural engineer, who serves on the Drummer Boy Advisory Committee. After a thorough examination of the residence building, it was determined that, in order to make this structure usable as a public building, it would cost the town approximately between \$60,000 and \$110,000 to complete the necessary repairs. The major deficiencies discovered were:

- Insufficient bearing capacity for the floors.
- Lack of insulation
- Deficiency of heating, electrical and plumbing systems.
- Failure of the structure's foundation, which would necessitate replacement.

In addition to the initial capital expense, the town would need to appropriate an annual maintenance budget. The committee decided that there was no reason for the town to undertake such expenses, particularly in light of the fact that no specific need for this building has been identified. The review of the gift shop building revealed that it is a sound structure with greater potential for renovation for public use. This structure is approximately 1,500 square feet in size. The cost to bring this building up to public code would be approximately \$30,000. This renovation would include the possible installation of insulation, a heating system, public rest room facilities, and a small kitchen. Maintenance of this structure would be substantially less expensive, due to its smaller size and simple construction.

Based on these determinations the Drummer Boy ad hoc Committee unanimously recommended that the residence building be removed and the gift shop building be renovated to become a Visitor's Center.

Based on the comments on schemes 1-6 from the committee and the concerned citizens, MSA developed a masterplan for the Drummer Boy Park. The final Masterplan is at the end of this section on drawing L-4.

Areas were identified to continue to be used as they are currently. The events will be held in the front area between the driveway and the street. Event parking will continue to be in the front to the east of the driveway. Parking for the summer band concerts will be on both sides of the driveway in the front of the site. No cars will be allowed north of the old gift shop on the lawn.

The existing gift shop will be renovated to contain a kitchen and bathrooms. This new Visitor's Center will be used for community meetings as well as a base for all of the site events. The gravel parking area will be better defined by improving the edge between the gravel and the lawn. This will become the handicapped parking for the site. The privet hedge will be relocated to open the lawn and make it more usable for events. The flagpole will be relocated to the entry of the Visitor's Center.

The existing residence will be removed from the site. It could be offered to a charity or an organization like Habitat for Humanity to remove from the site. If they could not move it for use as a residence, they could use pieces in other construction in progress. The basement will be filled in and a overlook area will be paved on the top of the knoll. This overlook will offer sweeping views of the park and the bay. Shade trees and benches will encourage visitors to pause and enjoy the view.

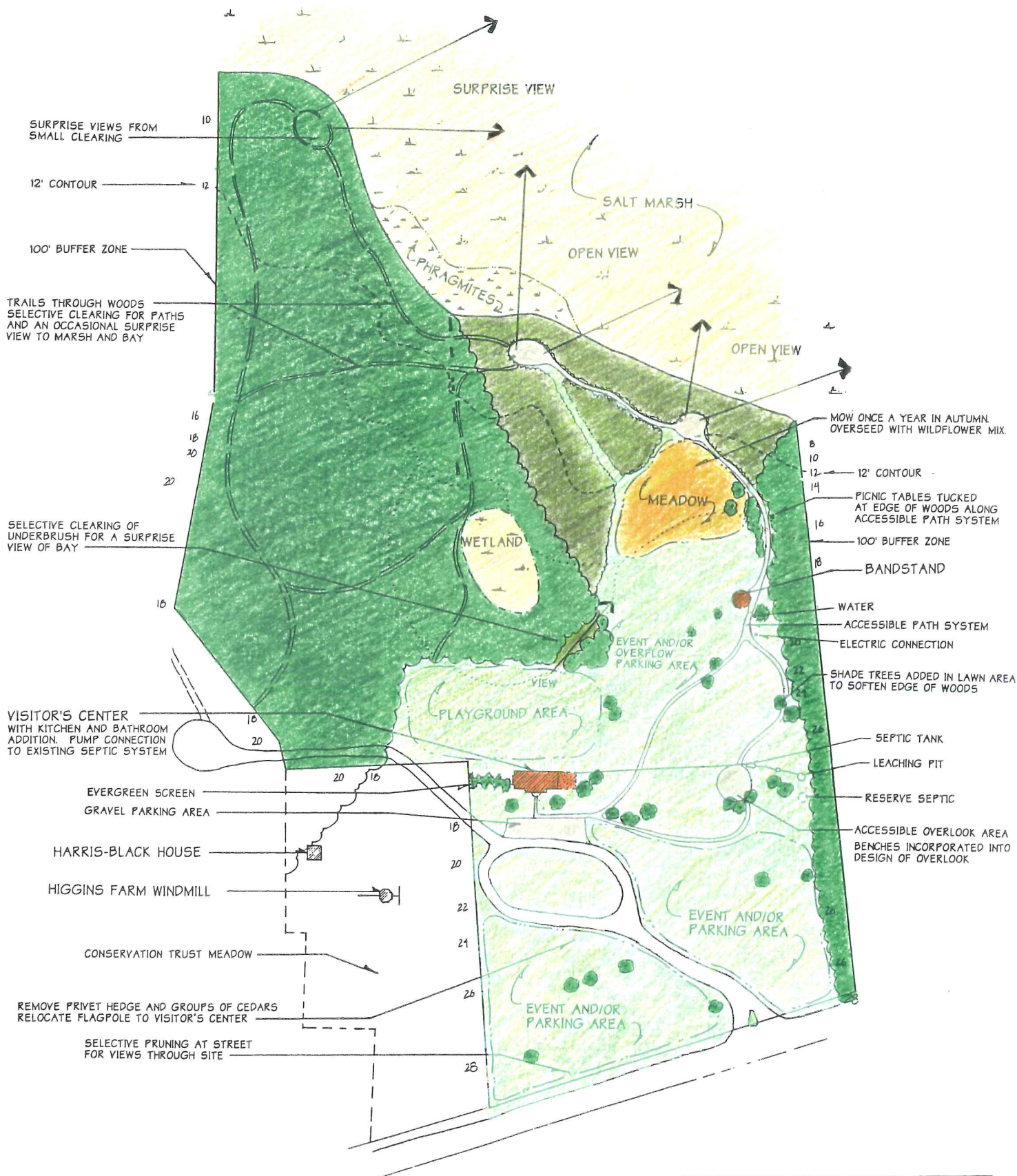
An accessible path will connect the Visitor's Center and handicap parking to the overlook. This path will then meander down the slope to the bandstand. Another accessible path will connect the Visitor's Center and bandstand directly. The path will continue down to the top of the coastal bank to provide panoramic views of the bay, Wings Island and back into the park. The accessible path system will provide a variety of experiences through an open grassy field, to the top of the knoll, at the edge of the woods, into the bandstand, into the woods, and between a wildflower meadow and the Bayberry thicket. The wildflower meadow will be established to echo the meadow maintained by the Conservation Trust to the west of the park. The educational walks and butterfly observation that currently occur in the Conservation Trust meadow can be extended to this new meadow. The meadow also provides a handsome transition from the mown lawn to the Bayberry thicket and

increase the species diversity in the park. Shade trees will be clustered in a few positions throughout the park to provide shade and frame views.

A hiking trail system will continue from the second overlook at the bay through the woods and connect back to the driveway and to the playground. The playground will be located directly behind the Visitor's Center. A surprise view out to the rest of the park and to the Bay will be provided by selective pruning and removal of branches. This will be a perfect area for a bench for people watching their children in the playground.

In this new park everyone will enjoy a more open view of the bay. From the street your eye will travel over a rolling expanse of lawn and a wildflower meadow, to a thicket of Bayberry, across the saltmarsh then out to the bay. Thanks to the hard work of your Drummer Boy Advisory Committee and all the concerned citizens who helped, this Masterplan maintains and enhances the beautiful views to the Bay for all the citizens of Brewster.





SURVEY FROM 9-1-97 PLAN
BY RENNETT & O'KEILLY, INC.

DRUMMER BOY PARK

Brewster, Massachusetts

MASTER PLAN

MARY SMITH
ASSOCIATES

MARY SMITH ASSOCIATES, P.C.
LANDSCAPE ARCHITECTS
& PLANNERS
30 CHESTNUT STREET
QUINCY, MA 02169
(617)770-4717 • fax (617)773-7655

SCALE: As Shown

DATE: 5-1-95

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REPORT OF THE DRUMMER BOY AD HOC COMMITTEE

INTRODUCTION

A seven member ad hoc committee was appointed by the Board of Selectmen in early November of 1991 to study the situation that resulted from the complete take over of the Drummer Boy land and buildings.

This committee was charged to report back to the Board of Selectmen with their suggestions by February 26, 1991. This deadline was specified to allow the Selectmen time to study any further ideas and to place the matter before Brewster voters at the Annual Town Meeting on May 11, 1992.

PROCEDURE

The Committee as appointed consisted of the following Brewster residents: Charles Dedon, Sally Desmond, Robert Franklin, Terry Ladd, William Nielsen, Paul Saint, and Robert Wilkinson. Charles Sumner became the ex-officio member.

The first meeting was held on November 4, 1991, and at that time elected William Nielsen as chairman. The following guideline considerations were set forth as criteria for deliberation:

1. The intention of the Town in buying the property.
2. Assessment of land and buildings.
3. The voice of the public as to usage.
4. Financial considerations.

Numerous posted meetings were held in November, December, January, and February at which the use of the property was reviewed within the context of the guidelines.

In early November the Committee toured the grounds and all three buildings to better assess site conditions.

In addition, a public hearing was held on December 4, 1991 at which the Committee heard from many interested citizens as to their ideas on the use of the property.

CONSIDERATIONS

I. The intention of the Town in buying this property

The Town's feelings as stated in the purchase and sale agreement dated December 15, 1987 reads as follows:

"The Town of Brewster agrees that in the development and the use of the property, all development and use will be designed, sited, and maintained so that no harm is done to the natural and scenic qualities of the area and so that the fragile wetland, dune and upland areas will be protected to prevent erosion and to preserve critical habitats and the area's natural scenic qualities, including the unparalleled view of Cape Cod Bay from Route 6A."

The summary statement on Article 1 of the Special Town Meeting of January 25, 1988 reads as follows:

"...The Board of Selectmen feel this is a prime opportunity for the Town of Brewster to purchase a parcel of land that contains an unparalleled view of Cape Cod Bay from Route 6A. The parcel contains 500 feet of frontage on Route 6A and a significant frontage on the fragile wetland and dune area on Cape Cod Bay."

"Finally, we intend to amend the article at Town Meeting to require that any future use of this property will have to be reviewed and approved by Town Meeting."

II. ASSESSMENT OF LAND AND BUILDINGS

With the change of occupancy and complete ownership/control from the McGowan family to the Town of Brewster, come a number of potential problems that must be faced. Both short-term and long-term, before any of the buildings can be occupied or opened to the public, the property must conform to current codes and regulations. Changes are required in the septic system, electrical, plumbing and handicap access to conform with the new Americans with Disabilities Act.

III. THE VOICE OF THE PUBLIC AS TO USE

The Committee heard and weighed the following proposals:

- A. Maintain the property as it is.
- B. Establish a public park.
- * C. Keep the Museum in operation.
- D. Establish a Tourist Information Center in the Gift Shop building.
- E. Rent the residence to a caretaker to maintain the grounds.
- * F. Demolish all existing buildings.
- * G. Build an Elementary School.
- * H. Convert existing buildings to a Town Hall.
- * I. Build a new Town Hall on the property.
- * J. Build an Astronomical Observatory.
- * K. Use the land for recreational activities.
- * L. Have the Historical Society move and operate buildings.
- M. Use the residence for club/group meetings
- * N. Build a Crematorium.
- * O. Create a walk-on cemetery.
- P. Locate a bandstand on the property.
- * Q. Lease Gift Shop for sale of antiques/gifts.
- * R. Use land for elderly housing.
- S. Add picnic tables and swings for children.
- T. Continue to hold antique and art shows on the grounds.
- * U. Convert the land to a Community Farm.
- * V. Lease buildings for a Medical Center/Sanitorium.
- * W. Lease the buildings for a Research Center.

After consideration of all aspects of each of these uses, those proposals that have been indicated with an asterisk (*) were eliminated for the present time, because one or more of the guideline criteria made them impractical or non-viable options at this time.

IV. FINANCIAL CONSIDERATIONS

This represents a major stumbling block, as any use of the property/buildings involves a financial obligation. The Committee's recommendations have taken the position that with Brewster's present financial difficulties, any use must severely curtail additional expense to the Taxpayers. Bearing this in mind, please note that for the immediate future, the only suggested expense involves a system for security of the buildings.

V. RECOMMENDATIONS

A. A short term solution, in light of the current financial condition of Brewster and our general economy, is to mothball the buildings. However, we the Committee would very strongly urge the Town to have an adequate security system installed without delay.

Mothballing would allow Brewster to buy time to actively pursue use of the buildings by financially solvent groups or organizations that would agree to meet required codes and regulations.

B. We suggest that the Town consider allowing the Brewster Board of Trade and/or the Chamber of Commerce availability of the "Gift Shop" building as an Information Center for visitors to our Town, provided that such a program would be cost free in all respects to the taxpayers.

C. We applaud the offer of the Brewster Board of Trade to donate a bandstand for concerts on the Drummer Boy land. This bandstand would then become part of the Town's normal maintenance program.

D. We also suggest the Town seek a caretaker to reside in the residence, rent free. The caretaker would agree to pay all related building expenses, such as heat, electricity, water, phone, insurance, etc. The caretaker would also be responsible for maintenance of the grounds, including cutting the grass, and would agree to act as a resident security guard.

E. The concept of an astronomical observatory is laudable, but the Committee feels that such a use would compromise the Town's original intention for acquiring the land, and that the consequence of a required 25 year lease is essentially the same as selling the land. Therefore it is the conclusion of the Committee that this is not an appropriate use of the site.

F. This leaves the museum building in question. To date no group or organization has come forward to offer the money needed in order to meet building codes and regulations.

As this museum is one of a kind and a true asset to Brewster,

we urge the Selectmen to continue to search for an appropriate museum related use as a means of preserving this cultural resource. While our immediate short-term recommendation is to keep the buildings mothballed, we urge the Selectmen to keep looking.

The Committee also suggests that if the Board of Selectmen agree with the museum proposition, that every effort be made to obtain the museum's paintings and related exhibits for inclusion in a future museum.

G. Although not specified in this Committee's original scope and purpose, we would like to recommend the establishment of a permanent Land Committee. In light of the evolution of the Town as a major land holder, we suggest that the Board of Selectmen consider appointing a permanent Land and Buildings Management Body/Committee to coordinate with all Town entities controlling land, to serve as an interim authority for oversight of land not yet designated to a specific department, and to develop a comprehensive long-term Land Management Plan for all Town Lands.

CONCLUSION

This report is meant to serve as a summary of the Committee's full deliberations. All letters received by the Committee, as well as detailed minutes of all meetings, including the public hearing, are being submitted with this report in order to provide back-up information and a complete file for reference and/or review. Our recommendations are based on conditions existing at this time and should be evaluated on that basis.

This Committee wishes to express its appreciation to the many citizens, societies, and organizations who came forward with timely proposals for the use of this valued Drummer Boy property. We wish also to stress that any future use must take into consideration the intent of the Town in purchasing this land.

Respectfully submitted,

William S. Nielsen, Chairman

Date

For the Drummer Boy Ad Hoc Committee:

Charles S. Dedon
Sally C. Desmond
Robert M. Franklin
Terry Ladd
Paul F. Saint
Robert L. Wilkinson
Charles L. Sumner

DEED OF LIFE ESTATE AND REMAINDER
WITH RETAINED LIFE ESTATE
SUBJECT TO CONDITIONS

LEWIS A. MCGOWAN, JR., of Route 6A, Brewster, Barnstable County, Massachusetts 02631, in consideration of ONE DOLLAR (\$1.00) paid by Elizabeth McGowan and NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000.00), paid by the Inhabitants of the Town of Brewster, and retaining a life estate in the Grantor, grants to ELIZABETH MCGOWAN, Route 6A, Brewster, Barnstable County, Massachusetts 02631, during her life, and the remaining fee interest, WITH QUITCLAIM COVENANTS, to THE INHABITANTS OF THE TOWN OF BREWSTER, a Municipal Corporation having its principal place of business at the Town Offices, Main Street, Brewster, Barnstable County, Massachusetts 02631, the land in Brewster, Barnstable County, Massachusetts, together with the buildings thereon, bounded and described as follows:

LOT #2 as shown on, "Division Plan of Land in Brewster made for Lewis A. McGowan, Jr. Scale: 1 in. = 100 ft. Feb., 1988 Slade Associates, Inc., Reg. Land Surveyors, Rte 6 & Pine Pt. Rd., Wellfleet, MA. and recorded with Barnstable Deeds in Plan Book 445, Page 98 .

Containing an area of about 17 acres, more or less and including the fee in the two "Right-of-Way" areas shown within Lot #2 on said plan.

This conveyance does not convey to either Grantee any express or implied rights in nor easements over Lot 1 as shown on said plan.

Meaning and intending to create life estates to the said McGowans to be held in common and conveying the remainder to the Town of Brewster.

Said reserved life estate and conveyances shall be subject to the following additional reservations and conditions:

1. Retaining in the Grantor a right of way easement for all purposes for which ways are used in the Town of Brewster over the "Right of Way and Existing Right of Way as shown on said plan appurtenant to Lot 1 as shown on said plan. Said easement shall include the right to construct a subdivision road over said easement to access two residential lots to be created from Lot 1 and to install underground utilities under and along said right of way and strips 10 feet wide abutting said right of way, and to locate drainage easements and utilize same as required to obtain Planning Board approval for a subdivision plan and to construct said road in accordance therewith.

COMMONWEALTH OF MASSACHUSETTS
DEEDS & EXCISE
900.00
CANCELLED
MAR 1 1988
BARNSTABLE

COMMONWEALTH OF MASSACHUSETTS
DEEDS & EXCISE
366.00
CANCELLED
MAR 1 1988
BARNSTABLE

COMMONWEALTH OF MASSACHUSETTS
DEEDS & EXCISE
900.00
CANCELLED
MAR 1 1988
BARNSTABLE

T

2. DURING THE TERM OF THE AFOREMENTIONED LIFE ESTATES, MR. AND MRS. MCGOWAN SHALL HAVE THE RIGHT TO RESIDE IN THE RESIDENCE ON THE PREMISES AS WELL AS TO OPERATE THE "DRUMMER BOY MUSEUM AND GIFT SHOP." DURING THE PERIOD OF THIS OPERATION, THE GRANTOR SHALL BE RESPONSIBLE FOR PAYMENT OF ALL COSTS IN CONNECTION WITH THE OPERATION OF THE MUSEUM AND GIFT SHOP AND ALL PROCEEDS FROM THE OPERATION OF THE SAME SHALL REMAIN THE PROPERTY OF THE GRANTOR. DURING THE TERM OF THE AFOREMENTIONED LIFE ESTATES, THE GRANTOR SHALL AT HIS OWN EXPENSE BE RESPONSIBLE FOR THE CARE, MAINTENANCE AND UPKEEP OF THE BUILDINGS AND OTHER IMPROVEMENTS AS WELL AS THE GROUNDS SURROUNDING THE SAME.

3. DURING THE PERIOD OF THE AFOREMENTIONED LIFE ESTATES, SHOULD THE LIFE TENANTS OR THE SURVIVOR OF THEM, BECOME INCAPACITATED, EITHER PHYSICALLY OR MENTALLY AND TAKE UP RESIDENCE OTHER THAN ON THE PREMISES; THEN, AND IN THAT EVENT, THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER SHALL HAVE THE OPTION TO TERMINATE THE LIFE ESTATE OF THE LIFE TENANTS OR THE SURVIVING LIFE TENANT BY PAYMENT OF \$50,000.00 TO THE LIFE TENANT OR TENANTS OR THEIR LEGAL REPRESENTATIVE. THE RECEIPT OF SUCH PAYMENT SHALL FORTHWITH TERMINATE THE LIFE TENANCY AND ALL RIGHTS ACCRUING TO THE LIFE TENANTS OR THE SURVIVING LIFE TENANT THEREUNDER. THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER SHALL BE ENTITLED TO RECEIVE A DEED OF SAID INTEREST FROM THE LIFE TENANT OR TENANTS OR THEIR LEGAL REPRESENTATIVE.

4. FOLLOWING THE CONVEYANCE OF THIS PROPERTY TO THE GRANTEES AND DURING THE PERIOD OF THE LIFE TENANCIES, ALL OBLIGATIONS AND RESPONSIBILITIES FOR REAL ESTATE TAXES ON THE SUBJECT PROPERTY BOTH LAND AND BUILDINGS SHALL BE THE SOLE RESPONSIBILITY OF THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER.

5. FOLLOWING THE CONVEYANCE OF THE PROPERTY TO THE TOWN AND DURING THE PERIOD OF THE LIFE TENANCY, THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER SHALL BE RESPONSIBLE FOR PAYMENT OF THE FIRE AND CASUALTY INSURANCE ON THE BUILDINGS AND IMPROVEMENTS ON THE PREMISES. SUCH INSURANCE COVERING FIRE AND EXTENDED COVERAGE SHALL BE FOR THE REPLACEMENT VALUE OF THE BUILDINGS AND SITE IMPROVEMENTS AND ANY DEDUCTIBLE SHALL BE PAID BY THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER IN THE EVENT OF ANY LOSS.

6. FOLLOWING THE CONVEYANCE OF THE PROPERTY TO THE GRANTEES AND DURING THE TERM OF THE AFOREMENTIONED LIFE ESTATES, PERSONAL INJURY AND LIABILITY INSURANCE SHALL BE MAINTAINED ON THE RESIDENCE, DRUMMER BOY MUSEUM AND GIFT SHOP IN A MINIMUM AMOUNT OF ONE MILLION (\$1,000,000.00) DOLLARS; HOWEVER, THE PAYMENT OF THE SAME SHALL BE BORN BY THE GRANTOR AS PART OF THE OPERATION OF THE DRUMMER BOY MUSEUM AND GIFT SHOP. THE GRANTOR AGREES THAT AS OF THE DATE OF THE CLOSING HE WILL MAINTAIN THE AFOREMENTIONED PERSONAL LIABILITY INSURANCE IN A MINIMUM AMOUNT OF \$1,000,000.00 ON THE SUBJECT PREMISES AND SHALL CAUSE TO BE NAMED THE TOWN OF BREWSTER AS A CO-INSURED ON SAID POLICY. THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER, COMMENCING ON THE DATE OF CLOSING SHALL MAINTAIN FIRE INSURANCE AND EXTENDED COVERAGE INSURANCE ON THE BUILDINGS AND IMPROVEMENTS ON THE PREMISES AND SHALL CAUSE TO HAVE NAMED THE GRANTOR AND GRANTEE ELIZABETH MCGOWAN AS CO-INSUREDS ON SAID POLICY.

7. THE GRANTOR FURTHER AGREES TO INDEMNIFY AND SAVE HARMLESS THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER FROM AND AGAINST ANY AND ALL CLAIMS OF WHATEVER NATURE ARISING FROM ANY ACCIDENT, INJURY, OR DAMAGE WHATSOEVER CAUSED TO ANY PERSON, OR TO THE PROPERTY OF ANY PERSON, OCCURRING DURING THE LIFE TENANCIES AND THE OPERATION OF THE DRUMMER BOY MUSEUM AND GIFT SHOP IN, OR ABOUT THE SUBJECT PROPERTY OR THE BUILDINGS CONSTRUCTED THEREON. THIS INDEMNITY AGAINST ALL COSTS, EXPENSES AND LIABILITIES INCURRED SHALL INCLUDE COSTS, EXPENSES AND LIABILITIES INCURRED IN OR IN CONNECTION WITH ANY SUCH CLAIM OR PROCEEDING BROUGHT THEREON AND THE DEFENSE THEREOF.

8. WITH RESPECT TO THE AFOREMENTIONED POLICIES OF PERSONAL LIABILITY INSURANCE, THE SAME SHALL BE NON-CANCELLABLE WITH RESPECT TO THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER WITHOUT TEN (10) DAYS PRIOR WRITTEN NOTICE TO SAID GRANTEE AND THROUGHOUT THE TERM OF THE LIFE ESTATES A DUPLICATE POLICY ORIGINAL OR CERTIFICATE THEREOF SHALL BE DELIVERED BY THE GRANTOR TO SAID GRANTEE.

9. THE GRANTOR AGREES THAT DURING THE TERM OF THE AFOREMENTIONED LIFE ESTATES WHILE HE IS RESPONSIBLE FOR THE CARE, MAINTENANCE, AND UPKEEP OF THE BUILDINGS AND IMPROVEMENTS ON THE PROPERTY AND GROUNDS, THAT HE SHALL INDEMNIFY THE GRANTEE INHABITANTS OF THE TOWN OF BREWSTER AGAINST ALL LIABILITIES, EXPENSES AND LOSSES INCURRED BY SAID GRANTEE AS A RESULT OF:

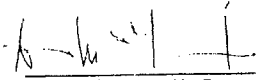
(A) FAILURE OF THE GRANTOR TO PERFORM ANY COVENANT OR AGREEMENT REQUIRED TO BE PERFORMED IN CONNECTION WITH THE CARE, MAINTENANCE AND UPKEEP OF THE BUILDINGS.

(B) ANY ACCIDENT, INJURY OR DAMAGE WHICH SHALL HAPPEN IN OR ABOUT THE SUBJECT PREMISES OR APPURTENANCES CAUSED BY ANY ACTIVITIES OCCURRING ON THE PREMISES DURING THE LIFE ESTATE OR AS PART OF THE ACTIVITIES OF THE GRANTOR IN CONNECTION WITH THE OPERATION OF THE MUSEUM AND GIFT SHOP.

(C) ANY MECHANICS LIEN, SECURITY AGREEMENT OR ATTACHMENT, FILED AGAINST THE SUBJECT PROPERTY, OR ANY MATERIALS USED IN CONNECTION WITH THE CONSTRUCTION, REPAIR, OR ALTERATION OF THE BUILDINGS AND IMPROVEMENTS ON THE SUBJECT PROPERTY.

For title, see deed of Leonard Dubin and Philip Dubin to Lewis A. McGowan, Jr., dated September 9, 1959 and recorded with Barnstable Registry of Deeds in Book 1054, Page 1.

WITNESS my hand and seal this // day of March 1988.


Lewis A. McGowan, Jr.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

March 11 1988.

Then personally appeared the above named Lewis A. McGowan, Jr. and acknowledged the foregoing instrument to be his free act and deed, before me,

My commission expires: 2/7/1994
Notary Public
Richard C. Perkins
(place notary seal here)

S.T.M. 1/25/88

Report of the
SPECIAL TOWN MEETING

January 25, 1988

In accordance with the warrant the Special Town Meeting was held in the Brewster Elementary School Cafetorium, Monday January 25, 1988.

This Meeting was called to order at 7:20 P.M. by the Moderator, Stephen L. Doyle. The tellers were Dorothy Grenier, Edwin Blease, June Gallant, and J. Ogden J. Tyldsley, Jr. Checkers were Dorothea Dugan, Jean Gage, Carl Scrivener, Margo Cathie. A Quorum of 229 was present.

ARTICLE 1. I move that (A) the Board of Selectmen is hereby authorized to purchase for municipal purposes from Lewis A. McGowan, Jr., for the sum of NINE HUNDRED FIFTY THOUSAND (\$950,000) DOLLARS, the land and buildings thereon, situated in West Brewster, Barnstable County, Massachusetts, located on the northerly side of Route 6A, containing approximately seventeen (17) acres, more or less, having five hundred (500) feet of frontage, more or less, on Route 6A, to be shown on a plan drawn by Slade Associates, and being a portion of the premises described in the deed to the seller from Leonard Dubin of Waltham, Middlesex County, Massachusetts, and Philip Dubin of Dennis, Barnstable County, Massachusetts, said deed being dated September 9, 1959, and recorded with the Barnstable Registry of Deeds in Book 1054, Page 1, said land comprising all of the seller's property set forth in said deed excepting two residential building lots comprising 5.85 acres, more or less, on the westerly side of the property, which will be retained by the seller and which will be shown on a plan hereinafter referred to; the land shall be conveyed subject to a forty (40) foot wide right of way to access the retained two lots and subject to obtaining Planning Board approval therefor; said right of way shall comprise the existing way shown on Plan of Land in Brewster for Lewis A. McGowan, Jr., dated June 3, 1974 and recorded with Barnstable Deeds in Plan Book 293, Page 61, plus an extension of said right of way northwesterly to the two lots shown on said plan; subject to a life estate to be granted to Lewis A. McGowan, Jr. and Elizabeth McGowan by the Town of Brewster, and according to the executed purchase and sale agreement, between Lewis A. McGowan, Jr., as seller, and the inhabitants of the Town of Brewster, as buyer, which is on file in the office of the Town Clerk; (B) the sum of \$950,000 is hereby appropriated to finance the cost of acquiring such land and that to raise this appropriation, the sum of \$200,000 shall be transferred from available funds in the Treasury and the Treasurer, with the approval of the Selectmen, is authorized to borrow the sum of \$750,000 under and pursuant to Chapter 44, Section 7(3), of the General Laws, as amended and supplemented, or any other enabling authority, by the issuance and sale of bonds or notes payable to Lewis A. McGowan, Jr. over a term of seven (7) years from the date thereof in accordance with the terms of the purchase and sale agreement hereinbefore described; (C) the further sum of \$20,000 is hereby appropriated and shall be raised by transfer from available funds in the Treasury for the first payment of interest on the bonds or notes issued hereunder and costs associated with the transaction; and (D) the Board of Selectmen and other Town officers and officials are hereby authorized to take any and all action deemed by them necessary to complete the transactions authorized herein; and that any future use of this property shall be determined by Town Meeting action.

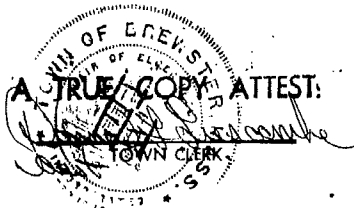
ADOPTED YES 504 NO 10

ARTICLE 2. To act on any other business that may legally come before this meeting.

There being no other business to come before this meeting, it was adjourned at 8:25.

A True Copy ATTEST:

Barbara A. Vaughn, CNO/AAR
Town Clerk



RECORDED MAR 11 88

ZISSON AND VEARA

ATTORNEYS AT LAW

RICHARD L. ZISSON
EDWARD E. VEARA
PAUL V. BENATTI
JILL J. BROFSKY
E. JAMES VEARA

AT WELLESLEY OFFICE PARK
45 WILLIAM STREET
WELLESLEY, MASSACHUSETTS 02181
TEL (617) 431-2100
FAX (617) 237-0766

828 MAIN STREET-BOX 2031
OLD KINGS HIGHWAY
DENNIS, MASSACHUSETTS 02638-1530
TEL (508) 385-6031
FAX (508) 385-6914

August 15, 1994

Ms. Jillian Douglass
Administrative Assistant
Board of Selectmen
Town of Brewster
Brewster, MA 02631

Re: Use of Drummer Boy Property

Dear Ms. Douglass:

Recently, you contacted this office, on behalf of the Board of Selectmen, to request a legal opinion on various issues surrounding the use of the Drummer Boy property. I have researched the matter, and this letter is written to convey my response. My analysis of the queries contained in the Request are set forth here below, in the order in which they were presented to me in your letter.

The first issue raised in your Request concerned the legality of the Board of Selectmen's recent vote regarding a playground on town-owned property. The factual history, as I understand it, began with the meeting of the Board, at which time the Playground Committee proposed to donate playground equipment to the Town for use on Town property. Evidently, the Committee considered a number of different Town-owned sites, and its first preference is the Drummer Boy property. At the meeting, the Selectmen voted 3-2 to establish a recreation site on the Drummer Boy Property or at a site to be determined. At the time of the vote, Town Administrator, Charles Sumner, indicated that such a vote would not need Town Meeting approval because the Selectmen merely approved the concept of accepting a volunteer built playground somewhere in the Town with the focus being on the Drummer Boy property. Mr. Sumner explained that this would allow the Committee to begin the fund-raising efforts as soon as possible and allow time for an Advisory Committee to work on the specific details of the proposal.

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August 15, 1994
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The challenge to this Vote stems from the fact that, at a January 1988 Special Town Meeting, the Town mandated that "any future use of [the Drummer Boy] property shall be determined by Town Meeting. Obviously, the Board of Selectmen's most recent vote on the Playground was taken without Town Meeting approval. It is my opinion that the Board of Selectmen were fully within their authority when they rendered their vote on the playground and that the vote was not improper.

The Board of Selectmen did not authorize the Committee to put the playground on the Drummer Boy property. The Vote merely authorized the donation of the playground to the Town, at a location to be determined after a study was completed, with the help of the Advisory Board. Although the vote reflected a preference for the Drummer Boy site, it also very clearly mandated that other sites also be considered. While it is true that the Board does not have the authority to mandate the uses to which the Drummer Boy property is devoted due to the January 1988 Special Town Meeting, it is also true that this most recent vote by the Board did not include such a mandate. This recent vote simply authorized the donation of a playground at a site to be determined.

Your next query concerned some restrictive language contained in the Purchase and Sale Agreement (hereinafter referred to as "P&S") whereby the Town agreed to purchase the Drummer Boy Property. Article 32 of Schedule "B" of the P&S addresses the uses to which the Town agreed to put the property. In relevant part, it states the following:

"The Town of Brewster agrees that in the development and the use of the property all development and use will be designed, sited and maintained so that no harm is done to the natural and scenic qualities of the area and so that the fragile wetland, dune, and upland areas will be protected to prevent erosion and to preserve critical habitats and the area's natural scenic qualities, including the unparalleled view of the Cape Cod Bay from Route 6A."

The Purchase and Sale Agreement further provides in Article 12 that:

"The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed."

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The language from Article 32 of the P&S in which the Town agreed to limit the uses of the property is still binding on the Town due to Article 12 of the P&S. A P&S agreement is a contract which is binding on the parties to the extent of the terms contained therein. In addition to maintaining the unparalleled view of Cape Cod Bay from Route 6A, the Town also agreed to maintain the natural, scenic and environmental aspects of the property.

Technically, because of the broad and vague language used in the P&S, any activities which would disturb these interests violates Article 32; however, the parties' intent as they were negotiating the contract is instructive for determining the extent of the restrictions. Because the McGowans have both passed away, their intent can only be determined from existing records. Incidentally, only the McGowans and their estates would have standing to object to any action taken by the Town in violation of the agreement.

It is my opinion that Article 32 probably encompasses permanent structures that would affect the interests listed in the P&S. Temporary structures and activities, however, have less effect on these interests due precisely to their temporary nature, and, therefore, such activities more than likely do not fall within the precepts of Article 32 of the P&S.

Your next query centered around Town Meetings discussion which concerned limiting the property to "open space" uses only. It is my opinion that debate alone during Town Meeting does not have any legal force or effect on the use to which the Town puts the property. At this time, only a new Town Meeting vote could specify exclusive open space use. Because the words "open space" do not appear in the P&S or in any Town vote, they are not binding on the Town.

The requirement that the Town maintain "the unparalleled view of Cape Cod Bay from Route 6A" obviously refers to the view that already existed and therefore buildings existing at that time are in compliance.

You next asked if a playground and bandstand are permitted uses on the Drummer Boy property. It is my opinion that, as it stands right now, a playground could not be built on the Drummer Boy property without Town Meeting approval. The bandstand has already been constructed and, technically, its construction violated the 1988 Town Meeting Vote, as it was constructed without Town approval. However, subsequent Town Meeting could be used to ratify the Board's vote on the bandstand and this would rectify any current misstep. As for whether the bandstand violates the P&S, this would depend on how much the structure impedes the view of the

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Bay from Route 6A and interferes with the natural and environmental qualities of the area. Whether it impedes the view is a factual issue which can perhaps only be decided after an objective analysis by a disinterested party. If the Conservation Commission approved the bandstand, then it is doubtful it interferes with intent of the agreement that the natural and environmental qualities of the parcel not be disturbed. Moreover, it must be recalled that various buildings have been removed from the site and that the Town had only to maintain the quality of the Bay view as it once existed. To the extent that the addition of the bandstand and the removal of several buildings represented a net increase or improvement of the view of the Bay, the P&S provisions were not transgressed.

You next asked if the "open space" restriction affects the existing buildings. As I have already noted, no such "open space" restriction exists because there is no Town vote concerning this issue, merely debate and discussion. It might be argued that the restriction contained in Article 32 of the P&S concerning the preservation of "the unparalleled view of Cape Cod Bay from Route 6A" pertains to the existing buildings, as well. It is my opinion, however, that the language in the P&S does not apply to those buildings. That restriction explicitly speaks of "the unparalleled view", which can only mean the view which existed at the time the P&S was being negotiated. At that time, those buildings were already in existence and, therefore, their continued existence does not violate the P&S. With regard to the uses the remaining buildings can serve and what activities can be conducted in them, it is my opinion that this should be decided by Town Meeting. The P&S and the Deed do not include any restrictions regarding the use of those buildings. Nevertheless, please see my discussion regarding these structures and the building code further on in this response.

Your next inquiry concerned the fact that the Deed reflecting the transfer of the Drummer Boy property does not include any language regarding the use to which the Town agreed to devote the property. The Town, as the grantee party, is bound by the deed's terms. The Town is also bound by the written contract which constitutes the Purchase and Sale Agreement (hereinafter, "P&S"). Normally, as Article 12 of the P&S sets forth, the execution of the deed nullifies all prior agreements not contained in the instrument; however, Article 12 goes on to state that obligations contained in the P&S which were to take place after the delivery of the deed are to remain in effect against the party so obliged. Because Article 12 of the P&S extinguishes only those obligations which would arise before the delivery of the deed, the use restrictions contained in Article 32 of that agreement remain effective. The deed would prevail if it contained language related

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to the use of the land. Because the deed is silent on this topic, the P&S restrictions are not displaced. //

Your Request next asks what effect the January 1988 vote had on the authority of the Board of Selectmen to approve periodic events on the property. As I already noted, Article I of the 1988 Special Town Meeting states that "any future use of this property shall be determined by Town Meeting." Whether the Town Meeting vote restricts the Board of Selectmen's authority to allow periodic events to take place on the property depends on an interpretation of the intent of those who voted to approve it. The vote appears geared mostly to approving the purchase of the land by the Town. The last clause of the Vote, which limits the determination of any future use to Town Meeting action, must be interpreted within the context of the vote and the discussions which preceded it. Given the broad nature of the language contained in the text of the vote, the words "future use" were probably intended by the Town Meeting to refer to permanent future uses of the property; however, the word "any" comes directly before the term "future use," and this casts a doubt about the true meaning of the clause. Because I do not have a copy of the minutes of the Meeting, I cannot discern the true intent underlying this clause. In any event, as I noted above, a new Town Meeting vote can be utilized to clarify any ambiguity. A new vote can be used to alter or repeal any prior Town restriction placed on the use of the property. Furthermore, a future Town Meeting can clarify the distinction between ongoing events and single occurrence events and can also give the Board of Selectmen the authority to decide whether to approve those uses. Thus, if such a vote were passed, the Board would obviously have jurisdiction over those activities. //

Your Request next raises the issue of the current "use policy" of the Board of Selectmen and what it authorizes the Selectmen to do. Ordinarily, under M.G.L. c. 40 §3, the Board of Selectmen control the disposition of property, unless Town Meeting places control of the property in another board's hands. Such a Special Town Meeting Vote is, of course, binding on the Board of Selectmen. This is precisely what happened with the Drummer Boy property. Needless to say, however, the Town can always amend a prior vote at another Town Meeting. Thus, the Selectmen still have full authority to determine the use of all town-owned property without the need for a town vote, except the use of the Drummer Boy property. The Selectmen, therefore, do not need Town Meeting approval of their "use policy" as it concerns other town-owned property; however, their "use policy" cannot apply to the use of the Drummer Boy property because of the restriction imposed by 1988 Meeting. Therefore, it is my opinion that the Selectmen do not, at this time, have the authority to rule, on a case by case basis, //

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upon the various uses of the Drummer Boy property. Approval of the "use policy" by Town Meeting would not change that fact. M

Your final question concerned the liability and risk exposure represented by the existing structures on the Drummer Boy property. Because the buildings do not comply with the codes governing use of public buildings, the exposure of the Town is great. Because of recent amendments to the Massachusetts Tort Claims Act, towns are no longer immune from tort suits. It is my opinion, therefore, that the Town demolish or remove the buildings or else bring them in conformance with the pertinent codes. I also strongly suggest the Selectmen review the Town's insurance policies to ensure that the structures are afforded full coverage.

This concludes my response to your Request. Should you have any more questions regarding these matters, please do not hesitate to call.

Cordially,



Edward E. Veara
Town Counsel

STF/ja

cc: Board of Selectmen

Definitions from Black's Law Dictionary
Special Deluxe Fifth Edition - 1981

(Page 984)

Open Space - Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open spaces.

Common Open Space - An open space area within or related to a site designated as a development and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complimentary structures as are necessary and appropriate for the use of enjoyment of residents and owners of the development.

Structure - Any construction, or any production, or piece of work artificially built up or composed of parts joined together in some definite manner. That which is built or constructed; an edifice or building of any kind.

A combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.