

November 3, 2017

**Lee S. Smith**  
[lsmith@k-plaw.com](mailto:lsmith@k-plaw.com)

Mr. David Gould, Director  
Department of Marine and Environmental Affairs  
Town of Plymouth  
26 Court Street  
Plymouth, MA 02360

Re: Access to White Horse Beach

Dear Mr. Gould:

As you requested, we have had a title examination performed on certain access points to White Horse Beach for the purposes of determining whether the general public has rights to pass and re-pass over such land for purposes of access to White Horse beach. I have attached the title report (the “Report”) and title abstract prepared by Richard Golder, Esq. of Marsh, Moriarty, Ontell & Golder, P.C. and I offer the following summary of the results. The numbered paragraphs below refer to those access points you have described on Exhibit 1 that you have provided as the subject areas of this examination. The text shown in bold, italics below are the conclusions based upon the Report.

1. White Horse Road extension (See Report Item #4, Exhibit #2)

Exhibit #1 that you have provided states “Not an owned parcel; part of the road”. Assessors Map 45A shows the area as an extension of White Horse Road. The title examination on the parcels adjacent to the White Horse Road extension shows a reference to “a certain right of way leading to the beach” and Plan #76-303 (see Exhibit #3) describes the land as “Town of Plymouth”. The title exam did not find any record of this section of White Horse Road being taken as a public way or the Town’s ownership of the beach itself. The Town may have records of Town Meeting votes (perhaps circa 1883) with respect thereto. Please advise as to whether any such documentation can be located or if you would like us to request further title research on the extension or beach itself in this area. ***If such documentation can be located supporting a conclusion that the Town does own the White Horse Road extension parcel, the Town may allow the general public to access the beach via this parcel.***

2. Access between Assessors Map 45B, Parcel 7 and Parcel 8 (See Report Item #5, Exhibit #4)

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This parcel across Taylor Avenue in between Abington Avenue and Thomas Avenue is shown as “Howard Ave.” on Land Court Plan #10020A, Sheet 1 (see Exhibit #5). This parcel is privately owned by the abutters as well as other property shown on that Plan. ***These property owners have the right to exclude the general public from access over this parcel.***

3. Access between Assessors Map 45B, Parcel 14-11 and 14-12 (See Report Item #6, Exhibit #6)

This parcel across from William Avenue is shown as “Avenue” Land Court Plan #10020A, Sheet 1 (see Exhibit #7). This parcel is privately owned by the abutters (Lot 11 and Lot 12). ***These property owners have the right to exclude the general public from access over this parcel.***

4. Access between Assessors Map 45B, Parcel 14-35, Parcel 14-36, Parcel 14-15, and Parcel 14-16 (See Report Item #7, Exhibit #8)

This parcel across from the intersection of Taylor Avenue and Homer Avenue is shown as “Avenue” Land Court Plan #10020A, Sheet 2 (see Exhibit #9). This parcel is privately owned by the abutters (Lot 35, Lots 36 and 15, and Lot 16). ***These property owners have the right to exclude the general public from access over this parcel.***

5. Access between Assessors Map 45B, Parcel 14-32, Parcel 14-19, and Parcel 14-160A (See Report Item #8, Exhibit #10)

This parcel intersects with Taylor Avenue to the northeast of Homer Avenue and is shown as “Avenue” Land Court Plan #10020A, Sheet 2 (see Exhibit #11) and Plan #10020 N-1 (see Exhibit #12). This parcel is privately owned by the abutters (Lot 32, Lot 19 and Lot 160A). ***These property owners have the right to exclude the general public from access over this parcel.***

6. Access via Assessors Map 45B, Parcel 14A (See Report Item #1, Exhibit #13)

This parcel is adjacent to Beaver Dam Brook and Taylor Avenue and is shown on Land Court Plan #10020A, Sheet 2 (see Exhibit #14) as Lot A. This parcel is owned by the Town and ***the Town may allow the general public to access the beach via this parcel.***

7. Access via Assessors Map 46, Parcel 88I and Parcel 87C (See Report Item #3, Exhibit #15)

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These parcels are to the northeast of Hilltop Avenue abutting Taylor Avenue and are shown on Land Court Plan #2275F (see Exhibit #16) as Lots 88I and 87C. The parcels are owned by the Town and, subject to a private right of way as shown on the Plan, ***the Town may allow the general public to access the beach via these parcels.***

**8. 161 Taylor Avenue; Assessors Map 45B, Parcel 24 (See Report Item #2, Exhibit #17)**

This parcel is adjacent to Lot A described above and Taylor Avenue and is shown on Land Court Plan #10020A, Sheet 2 (see Exhibit #18) as Lot 24. This parcel is owned by the Town and, ***the Town may allow the general public to access the beach via this parcel.***

In summary, the access points shown on Exhibit 1 as Parcel #1, Parcel #6, Parcel #7 and 161 Taylor Avenue may be used by the general public. Parcel #2, Parcel #3, Parcel #4, and Parcel #5 are privately owned and are not accessible by the general public.

Please let me know if you have any questions or if I may be of further assistance. Thank you.

Very truly yours,



Lee S. Smith

LSS/ekh

Enc.

cc: Town Manager

595621/PLYM/0660

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October 18, 2017

Lee S. Smith, Esq.

KP Law  
101 Arch Street  
Boston, MA 02110

Re: White Horse Beach, Plymouth – research regarding specific access points to the beach  
MMOG File No. 52905

Dear Attorney Smith,

You have provided us with information identifying eight potential access points to White Horse Beach in the Town of Plymouth and asked that we review title materials in an effort to determine whether each access point is strictly private, or whether the public might share rights of access to the beach. We were also asked to identify any restrictions that we might find on the identified beach parcels.

Our findings are as follows, and I will begin by addressing the parcels owned by the Town of Plymouth:

## 1. Assessor's Parcel 045B-000-014A-000

- This parcel is registered land and is owned by the Inhabitants of the Town of Plymouth by virtue of Transfer Certificate of Title No. 30296. It is depicted as Lot A on Land Court Plan 10020<sup>A</sup>. It should be noted that only the southeasterly portion of Lot A is accounted for in the above referenced Assessor's Parcel. The northwesterly portion of Lot A, which begins at the northwesterly bound of Parcel 14-11A on Map 45B, extends across the northeasterly bounds of Lots 5 through 13 on Map 45B. While Lot A is shown as a very thin parcel of land on Land Court Plan 10020<sup>A</sup>, it is bound "Northeasterly by Plymouth Bay," so, to the extent land is adjacent to and seaward of Lot A, it would be included in Lot A. In other words, all beach adjacent to Lot A, to the low water line, would be included within the bounds of Lot A. The northwesterly portion of Lot A, as described, should extend Assessor's Parcel 14A into Map 45A, however a large portion of Whitehorse Beach appears without a parcel number on Map 45A. The easterly portion of the unmarked Beach Parcel is the portion of Lot A described above. We haven't performed specific research to identify the source of title in the Town of Plymouth for the westerly portion of the unmarked area of White Horse Beach.

- The Certificate of Title recites: "Said lot is subject to rights for boating and bathing in favor of the other land shown on said plan between Taylor Avenue and White Horse Beach, westerly of lot No. 11." There are numerous lots on the southwesterly side of Taylor Avenue, but the deed to the Town doesn't indicate that the rest of the subdivision has rights to use the beach. There are no public rights referenced on the face of the Certificate, or on the encumbrance sheet, but the beach would be subject to common law rights below mean high water.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title. It would appear that Lot A only touches Taylor Avenue at a point at its extreme southerly end. The portion of White Horse beach, as shown on Map 45A, that extends to Taylor Avenue between Lots 7 and 8 on Map 45B, is not part of the Registered Lot A and is addressed in Item 5 below.
- It is noteworthy that while the Certificates of Title for many of the other lots, including Lot 24 addressed below, contain the following language: "There is appurtenant to said lot the right to use the whole of the ways as shown on said plan, in common with others entitled thereto," the Certificate for Lot A does not contain similar language.

**2. Assessor's Parcel 045B-000-014-024**

- This parcel is registered land and is owned by the Inhabitants of the Town of Plymouth by virtue of Transfer Certificate of Title No. 122084. It is depicted as Lot 24 on Land Court Plan 10020<sup>A</sup>.
- Lot 24 is a triangular parcel that has frontage on Taylor Avenue and is contiguous to White Horse Beach (the above described Lot A) along its easterly bound. Although according to the Land Court plan there is very little land between said easterly bound and the "Creek."
- As noted above this Certificate of Title does reference appurtenant rights to use "the whole of the ways as shown on said plan."
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title. This provides public access to Lot 24, which is contiguous to Lot A, the larger beach parcel.

**3. Assessor's Parcel 046-000-088I-000 (and we assume 046-000-87C-000)**

- This parcel is registered land and is owned by the Town of Plymouth by virtue of Transfer Certificate of Title No. 11430. It is depicted as Lots 88I and 87C on Land Court Plan 2275<sup>F</sup>. While Parcel 87C appears on the Assessor's Map, it doesn't appear to be separately assessed. We found no card for 87C in the

Assessor's Database. We assume, based on the acreage of 88I, that it is intended to include Parcel 87C.

- These parcels are subject to a private right of way, depicted as "Way" on the plan for access to Lot 87F.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title. This provides public access to Lots 87C and 88I. Lot 87C extends directly to Cape Cod Bay and may include a small portion of Beach, but these parcels are not contiguous to other portions of White Horse Beach covered by this Report.

4. **Assessor's Parcels 045A-000-114A-000, 045A-000-121-000 and 045A-000-104-000.**  
Note: Each of these parcels has frontage on White Horse Road, which appears to extend through the Beach to the Bay. While there is an 1885 plan, recorded in Plan Book 1, Page 5 of "House Lots at White Horse Landing, Charles H. Peterson, Proprietor," the land on the beach side of the roads does not appear as subdivided lots on the Plan. White Horse Road is depicted as extending through the Beach to the Bay.

- **Assessor's Parcel 045A-000-114A-000.**
  - This Parcel is recorded land and is owned by Nancy J. Amenkowicz, a.k.a. Nancy J. Murray, by virtue of a Deed dated May 22, 1990 and recorded in Book 9762, Page 261. Its frontage is on White Horse Road and its easterly and northerly bounds would appear to be by the Beach. This small section of Beach west of the White Horse Road extension to the Bay is not assigned an Assessor's number on Map 45A.
  - We traced title back to the first deed out of Charles Peterson, recorded in 1877 in Book 443, Page 1 and found no specific reference to rights in the Beach, but the description does run to the "shore." When the next owner conveys in 1889, the description used is very close to the current legal description. The land to the east, which would be Beach, is described as land of Charles H. Peterson and the northeasterly bound is "by the top of the bank." This would appear to exclude any rights in the beach.
  - We found no evidence of ownership of this portion of the Beach by the Town. However, we did not examine the historic Charles Peterson title to determine whether he may have conveyed the Beach to the Town, or been subject to a taking. We believe that the Peterson family owned the land in question at least back to the 1840's. We also found no taking of White Horse Road as a public way.

• **Assessor's Parcel 045A-000-121-000.**

- This Parcel is recorded land and is owned by Full Sail, Inc., by virtue of a Deed dated May 8<sup>th</sup>, 1975 and recorded in Book 4066, Page 101. Its frontage is on Taylor Road and it is bounded on the north by "a certain right of way leading to the beach," which would appear to be the extension of White Horse Road. The deed recites descriptions of two parcels, making no reference to a plan of record. However, the two parcels combine to form the land shown as land of "Full Sail Inc." on the plan recorded in Book 4156, Page 405.
- We traced the title to each parcel back to the ownership of Charles Peterson. With respect to the first parcel, the land comes out of Peterson's estate in 1893, as part of a deed that after describing various non-locus lots, conveys "all other land, if any, at said Manomet." The actual parcel is first described in a deed out of Peter Wood in 1925, Book 1493, Page 399. Said Deed grants no specific rights to the Beach, nor does it reference rights of others, but it would have the benefit of common law rights to use "the right of way leading to the Beach." The second parcel comes out of a deed from Peterson in 1883, recorded in Book 506, Page 196. It is part of a parcel of land "between the Beach Field Road (now Taylor Road) and the sea shore" opposite the first parcel in the deed.
- While this parcel abuts Taylor Avenue and White Horse Road, we found no taking for either street in this location. The plan referenced above, in Book 4156, Page 405, indicates that Taylor Road is public in this location, based on a "1912 Town Layout" and shows White Horse Road as "Town of Plymouth." It is not clear from said plan that there is a road along the northerly bound, or whether it is just land of the Town. Again, we found no record of a deed or taking establishing ownership of White Horse Road or the Beach in the Town.

• **Assessor's Parcel 045A-000-104-000.**

- This parcel is recorded land and is owned by Full Sail, Inc. by virtue of a deed dated April 30, 1976 and recorded in Book 4156, Page 405. It has frontage on Taylor Road and is shown as the 1006 S.F. parcel on the above referenced plan recorded in Book 4156, Page 405. The legal description in said Deed describes the northerly bound as "by land now or formerly of the Town of Plymouth. . ." It makes no mention of White Horse Road in this location.
- We traced title to the same deed out of Charles Peterson referenced above, a deed from Peterson in 1883, recorded in Book 506, Page 196. It is part of a parcel of land "between the Beach Field Road (now Taylor Road) and the sea shore" opposite the first parcel in the deed.

- As recited above, we found no relevant takings for Taylor Avenue, White Horse Beach Road or the Beach. Our focus was on ownership of these three parcels and not the Beach itself, so it is possible that additional research might uncover the source of title to the Town's claim of ownership to this portion of the Beach. We suspect that White Horse Beach Road has been treated as Town access to the beach for many years and that this might have been the location of a Town landing.

**5. Assessor's Parcels 045B-000-007-000 and 045B-000-008-000. Note: These parcels are contiguous to and on opposite sides of an Avenue labeled "Howard Avenue" on Land Court Plan 10020<sup>A</sup>, although neither parcel is registered land.**

**• Assessor's Parcel 045B-000-007-000.**

- This parcel is recorded land and is owned by Michael J. Lack and Gregory M Cogan as trustees of the 223-225 Taylor Avenue Realty Trust by virtue of a deed dated September 30, 2010 and recorded in Book 39050, Page 327. Note that the name of the Trust has been changed to the 225 Taylor Avenue Realty Trust by Amendment recorded in Book 41652, Page 157. It is depicted as Lot 5 on a "Plan of Lots at White Horse Beach" recorded in 1923 in Plan Book 3, Page 533.
- We traced title to the lot to the first deed out of the developer, in 1903, and recorded in Book 885, Page 2. The deed does not exclude the fee in Howard Avenue (just referred to as "an Avenue" in the deed) and, by application of the Derelict Fee Statute would convey the fee to the center line along with ownership of Lot 5.
- The 1903 deed also recites "The grantee shall also have a right for boating and bathing purposes in common with other owners of the lots sold by us, on the beach in front of said lots . . ."
- The 2017 Taylor Avenue taking is recorded against this parcel, but there is no evidence of public rights in Howard Avenue. The Beach at the northerly end of Howard Avenue is the Registered Lot A referenced in Item 1 above. This Parcel would be one of the lots that have a private right to use this portion of White Horse Beach.

**• Assessor's Parcel 045B-000-008-000.**

- This parcel is recorded land and is owned by Dianne Boudreau by virtue of a deed dated August 2, 2000 and recorded in Book 18786, Page 224. It is depicted as Lot 6 on the above referenced "Plan of Lots at White Horse Beach" recorded in 1923 in Plan Book 3, Page 533.
- We traced title to the lot to the first deed out of the developer, in 1903, and recorded in Book 879, Page 214. The deed does not exclude the fee in

Howard Avenue (just referred to as “an Avenue” in the deed) and, by application of the Derelict Fee Statute would convey the fee to the center line along with ownership of Lot 6.

- The 1903 deed also recites “Also a right for bathing and boating in common with the other lot owners on the beach in front of said lot . . .”
- The 2017 Taylor Avenue taking is recorded against this parcel, but there is no evidence of public rights in Howard Avenue. Again, the Beach at the northerly end of Howard Avenue is the Registered Lot A referenced in Item 1 above. This Parcel would be one of the lots that have a private right to use this portion of White Horse Beach.

**6. Assessor’s Parcels 045B-000-014-011 and 045B-000-014-012. Note: These two parcels are contiguous to an access “Avenue” slightly northeast of the intersection of William Avenue with Taylor Avenue.**

• **Assessor’s Parcel 045B-000-014-011.**

- This parcel is registered land and is owned by Sonia M. Forst by virtue of Transfer Certificate of Title No 60673. It is depicted as Lots 11A and 11B on Land Court Plan 10020<sup>B</sup>. These lots are on the northwesterly side of said Avenue and the northeasterly side of Taylor Avenue. The Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.
- The Certificate of Title recites the following: “Said lots are subject to the rights of ways of all persons lawfully entitled thereto as stated in Certificate of Title No. 1992, so far as applicable; and there is appurtenant to the above described parcels the right to use the whole of said ways in common with others entitled thereto.” Original Certificate of Title No. 1992 recites: “So much of said parcels as by implication of law or by direct reference are included in any of the ways shown on said plan are subject to the rights of all persons lawfully entitled thereto in and over the same including the owners and occupants for the time being of the lands shown on said plan northeast of Taylor Avenue and northwest of lot No. 11 shown on said plan as to the ways lying between Taylor Avenue and the beach; and there is appurtenant to the parcels of land hereby registered the right to use the whole of said ways in common as aforesaid.” We researched title back to the first deed out of the developer, which is L.C. Document No. 4285 and confirmed that Lot 11 also includes the fee interest in the adjacent Avenue to the center line. The deed doesn’t contain a specific grant, but the fee interest would pass through application of the Derelict Fee Statute.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title.

- While the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public's right to use the Avenue extending to the Beach.

• **Assessor's Parcel 045B-000-014-012.**

- This parcel is registered land and is owned by Edward R. Gates by virtue of Transfer Certificate of Title No 114404. It is depicted as Lot 12 on Land Court Plan 10020<sup>A</sup>. This lot is on the southeasterly side of said Avenue and the northeasterly side of Taylor Avenue. The Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.
- The Certificate of Title recites the following: "Said land is subject to the rights of ways of all persons lawfully entitled thereto as stated in Certificate of Title No. 1993, so far as applicable; and there is appurtenant to the above described parcel the right to use the whole of said ways in common with others entitled thereto." Original Certificate of Title No. 1993 recites: "So much of said parcels as by implication of law or by direct reference are included in any of the ways shown on said plan are subject to the rights of all persons lawfully entitled thereto in and over the same including the owners and occupants for the time being of the lands shown on said plan northeast of Taylor Avenue and northwest of lot No. 11 shown on said plan as to the ways lying between Taylor Avenue and the beach; and there is appurtenant to the parcels of land hereby registered the right to use the whole of said ways in common as aforesaid." We researched title back to the first deed out of the developer, which is L.C. Document No. 5976 and confirmed that Lot 12 also includes the fee interest in the adjacent Avenue to the center line. The deed doesn't contain a specific grant, but the fee interest would pass through application of the Derelict Fee Statute.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title.
- While the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public's right to use the Avenue extending to the Beach.

7. **Assessor's Parcels 045B-000-014-035, 045B-000-014-036, 045B-000-014-015 and 045B-000-014-016. Note: These four parcels are contiguous to an access "Avenue" directly north of the intersection of Homer Avenue with Taylor Avenue.**

- **Assessor's Parcel 045B-000-014-035.**

- This parcel is registered land and is owned by Steven P. Kleinman and David M Brillhart by virtue of Transfer Certificate of Title No. 121187. It is depicted as Lot 35 on Land Court Plan 10020<sup>A</sup>. It is on the southeasterly side of the "Avenue" and the northeasterly side of Taylor Avenue. The Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.
- The Certificate of Title recites the following: "Said lot is also subject to the rights of all persons lawfully entitled thereto to use the ways as shown on said plan; and there is appurtenant to said lot the right to use the whole of said ways in common with others entitled thereto." We researched title back to the first deed out of the developer, which is L.C. Document No. 31934 and confirmed that Lot 35 also includes the fee interest in the adjacent Avenues to the center line.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title.
- While the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public's right to use the Avenue extending to the Beach.

- **Assessor's Parcel 045B-000-014-036 and Assessor's Parcel 045B-000-014-015**

- These parcels are registered land and are owned by Urban Family Limited Partnership by virtue of Transfer Certificate of Title No. 117232. They are depicted as Lots 36 and 15 on Land Court Plan 10020<sup>A</sup>. They are on the northwesterly side of the "Avenue" and the northeasterly side of Taylor Avenue. The Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.
- The Certificate of Title recites similar rights to those recited above, indicating that "those persons lawfully entitled" have the right to use the Avenue. We researched title back to the first deeds out of the developer, which are L.C. Document Nos. 4834 and 26724 and confirmed that Lots 36 and 15 also include the fee interest in the adjacent Avenues to the center line. The deeds don't contain specific grants, but the fee interest would pass through application of the Derelict Fee Statute.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title.
- As above, while the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public's right to use the Avenue extending to the Beach.

- **Assessor's Parcel 045B-000-014-016.**

- This parcel is registered land and is owned by Thomas J. Whyte Jr. by virtue of Transfer Certificate of Title No. 105562. It is depicted as Lot 16 on Land Court Plan 10020<sup>A</sup>. It is on the southeasterly side of the "Avenue" and the northeasterly side of another Avenue. It does not abut Taylor Avenue. The first mentioned Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.
- The Certificate of Title recites the following: "Said lot is also subject to the rights of all persons lawfully entitled thereto to use the ways as shown on said plan; and there is appurtenant to said lot the right to use the whole of said ways in common with others entitled thereto." We researched title back to the first deed out of the developer, which is L.C. Document No. 31931 and confirmed that Lot 16 also includes the fee interest in the adjacent Avenues to the center line. The deed doesn't contain a specific grant, but the fee interest would pass through application of the Derelict Fee Statute.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is not entered on the Memorandum of Encumbrances for the Certificate of Title, as it does not abut Taylor Avenue.
- Again, as above, while the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public's right to use the Avenue extending to the Beach.

8. **Assessor's Parcels 045B-000-014-032, 045B-000-014-019, and 045B-000-014-160A.**

**Note: These three parcels are contiguous to an access "Avenue" southeast of the intersection of Homer Avenue with Taylor Avenue.**

- **Assessor's Parcel 045B-000-014-032.**

- This parcel is registered land and is owned by Salvatore Zirilli and Janet Zirilli by virtue of Transfer Certificate of Title No. 108696. It is depicted as Lot 32 on Land Court Plan 10020<sup>A</sup>. It is on the northwesterly side of the "Avenue" and the northeasterly side of Taylor Avenue. The Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.
- The Certificate of Title recites the following: "So much of said lot as by implication of law, or by direct reference, is included in any of the ways shown on said plan is subject to the rights of all persons lawfully entitled thereto in and over the same; and there is appurtenant to said lot the right to use the whole of said ways in common as aforesaid." We researched title back to the first deed out of the developer, which is L.C. Document No. 34819 and confirmed that Lot 32 also includes the fee interest in the

adjacent Avenues to the center line. The deed doesn't contain a specific grant, but the fee interest would pass through application of the Derelict Fee Statute.

- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title.
- While the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public's right to use the Avenue extending to the Beach.

• **Assessor's Parcel 045B-000-014-019 .**

- This parcel is registered land and is owned by Marie F. Bourett by virtue of Transfer Certificate of Title No. 121555. It is depicted as Lot 19 on Land Court Plan 10020<sup>A</sup>. It is on the northwesterly side of the "Avenue" and the northeasterly side of another Avenue. It does not abut Taylor Avenue. The Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.
- The Certificate of Title recites the following: "So much of said lot as by implication of law, or by direct reference, is included in any of the ways shown on said plan is subject to the rights of all persons lawfully entitled thereto in and over the same; and there is appurtenant to the above described land the right to use the whole of said ways in common as aforesaid." We researched title back to the first deed out of the developer, which is L.C. Document No. 23835 and confirmed that Lot 19 also includes the fee interest in the adjacent Avenues to the center line by specific grant.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is not entered on the Memorandum of Encumbrances for the Certificate of Title, as the Lot does not abut Taylor Avenue.
- While the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public's right to use the Avenue extending to the Beach.

• **Assessor's Parcel 045B-000-014-160A**

- This parcel is a registered land condominium by virtue of Master Condominium Certificate of Title No. C14. It is depicted as Lot 160A on Land Court Plan 10020<sup>N-1</sup>. Common areas would be owned by the Seaside Condominium Association. It is on the southeasterly side of the "Avenue" and the northeasterly side of Taylor Avenue. The Avenue extends northeasterly to Lot A, addressed in Item 1 above, a portion of White Horse Beach.

- The Certificate of Title recites similar rights to those recited above, indicating that “those persons lawfully entitled” have the right to use the Avenue. We researched title back to the first deed out of the developer, which is L.C. Document No. 32234 and confirmed that Lot 160A also includes the fee interest in the adjacent Avenue. The deed doesn’t contain a specific grant, but the fee interest would pass through application of the Derelict Fee Statute.
- The taking for the layout of Taylor Avenue as a public way, recorded by the Town of Plymouth on August 1, 2017, is entered on the Memorandum of Encumbrances for the Certificate of Title.
- While the public has access to the end of the Avenue, via Taylor Road, there is nothing that would establish the general public’s right to use the Avenue extending to the Beach.

In summary, the Town of Plymouth owns the portion of White Horse Beach that is comprised of Lot A and the beach adjacent to Lot A on Land Court Plan 10020<sup>A</sup> (Assessor’s Map 45B, Parcel 14A). It has access to this portion of the Beach from Taylor Road to Parcel 14-24 on Assessor’s Map 45B, which is also owned by the Town and has frontage on Taylor Road. We presume that the Town owns the westerly portion of White Horse Beach that is shown as two unnumbered parcels on Map 45A, one on each side of White Horse Road, as it extends to the Beach. We also presume that the easterly end of White Horse Road is public, as it is labeled “Town of Plymouth” on a plan of the adjacent Lot 104. However, we found no evidence or record to establish the Town’s rights in either the westerly portion of the Beach, or White Horse Road. If this easterly portion of White Horse Road is public, it would provide access to the westerly end of White Horse Beach, as described above. While Lot A is adjacent to the stub ends of several “Avenues,” as shown on L.C. Plan 10020<sup>A</sup>, the Certificate of Title for Lot A does not recite it has the right to use said Avenues. While there may well be a common law argument to support the right to use the Avenues, all of the other Certificates reviewed specifically address the right to use the streets on L.C. Plan 10020<sup>A</sup>.

When Lot A was initially established as a private beach, as it apparently existed until its conveyance to the Town in 1960, it was only subject to the rights of Lot owners “between Taylor Avenue and White Horse Beach, westerly of Lot 11.” There was no clear intent to benefit all of the lots on the Land Court plan, let alone the public in general.

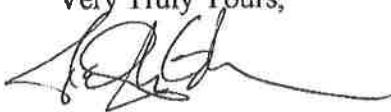
We also reported on Parcels 88I and 87C on Assessor’s Map 46. These parcels, owned by the Town, provide public access to the shore, but this location is not contiguous to the other portions of White Horse Beach addressed above.

The various “Avenues” addressed above are all owned privately by their abutters. While they are clearly subject to rights of the other lot owners on LC Plan 10020<sup>A</sup>, even though only a small portion of those owners have the right to use the beach, the Avenues are not subject to rights of the Public.

**MARSH, MORIARTY, ONTELL & GOLDER, P.C.**

If you would like to have us spend additional time exploring the Town's source of title to the westerly portion of White Horse Beach, please advise accordingly.

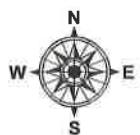
Very Truly Yours,



Richard M. Golder

G;LM/52905/Smith letter.10-18-17





## White Horse Beach Access (1 of 2)

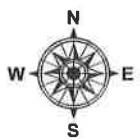
0 160 320 640  
Feet

Department of Marine &  
Environmental Affairs



## White Horse Beach Access (2 of 2)

0 160 320 640  
Feet



Department of Marine &  
Environmental Affairs





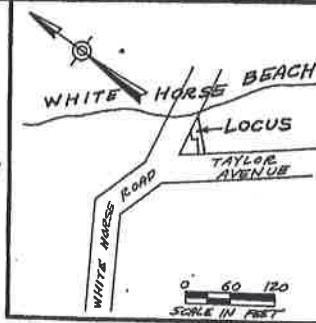


4156

## **EXHIBIT**

3

ALL-STATE LEGAL



TOWN OF PLYMOUTH

I HEREBY CERTIFY THAT I HAVE CONFORMED WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS IN PREPARING THIS PLAN.

MARCH 25, 1976 Robert D. Young  
DATE REGISTERED  
LAND SURVEYOR

AREA =  
1006 S.F.

JAMES W. BIRD  
ET UX

MARCH 25, 1976 Robert D. Sganzi

FULL SAIL INC.  
23.49 20.50 126.79  
43.99 ← N34-41-00W 176.7B CB

**TAYLOR AVENUE - PUBLIC 35' WIDE**

1912 TOWN LAYOUT

PLAN OF LAND

111

PLYMOUTH, MASSACHUSETTS  
TO BE CONVEYED BY  
HENRY L. CAPPELLA  
TO FULL SAIL INC.

MARCH 25, 1976

ROBERT D. SGARZI  
120 MAIN STREET  
KINGSTON, MASS.

Robert D. Gray

0 8 16 24  
SCALE IN FEET

PLATINUM CO. DEEDS  
MAY 4/56 Page 405

APR 30 1976  
4-30-76  
SEARCHED

76-303



**EXHIBIT**

4

ALL-STATE LEGAL®

REVIEW

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ONE BROOK ROAD

ARBORETUM ROAD

HONEY BEE LAI

ROYAL AND

MEADOW GLEN LANE

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AVENUE B

11/11/2012

11

ANDREW

White House

CAPE COD BAY

1. *On the Nature of the Human Species* (1859) by Charles Darwin  
2. *On the Origin of Species by Means of Natural Selection* (1859) by Charles Darwin  
3. *Principles of Geology* (1830-1833) by Charles Lyell  
4. *On the Volcanoes of the Azores* (1847) by Charles Lyell  
5. *On the Volcanoes of the Azores* (1847) by Charles Lyell  
6. *On the Volcanoes of the Azores* (1847) by Charles Lyell  
7. *On the Volcanoes of the Azores* (1847) by Charles Lyell  
8. *On the Volcanoes of the Azores* (1847) by Charles Lyell  
9. *On the Volcanoes of the Azores* (1847) by Charles Lyell  
10. *On the Volcanoes of the Azores* (1847) by Charles Lyell

TOWN OF PLYMOUTH  
ASSESSORS MAP

45B



100206 - LOTS 1104110. CIR 1. 0657  
100206 - LOTS 1104110. CIR 2. 12

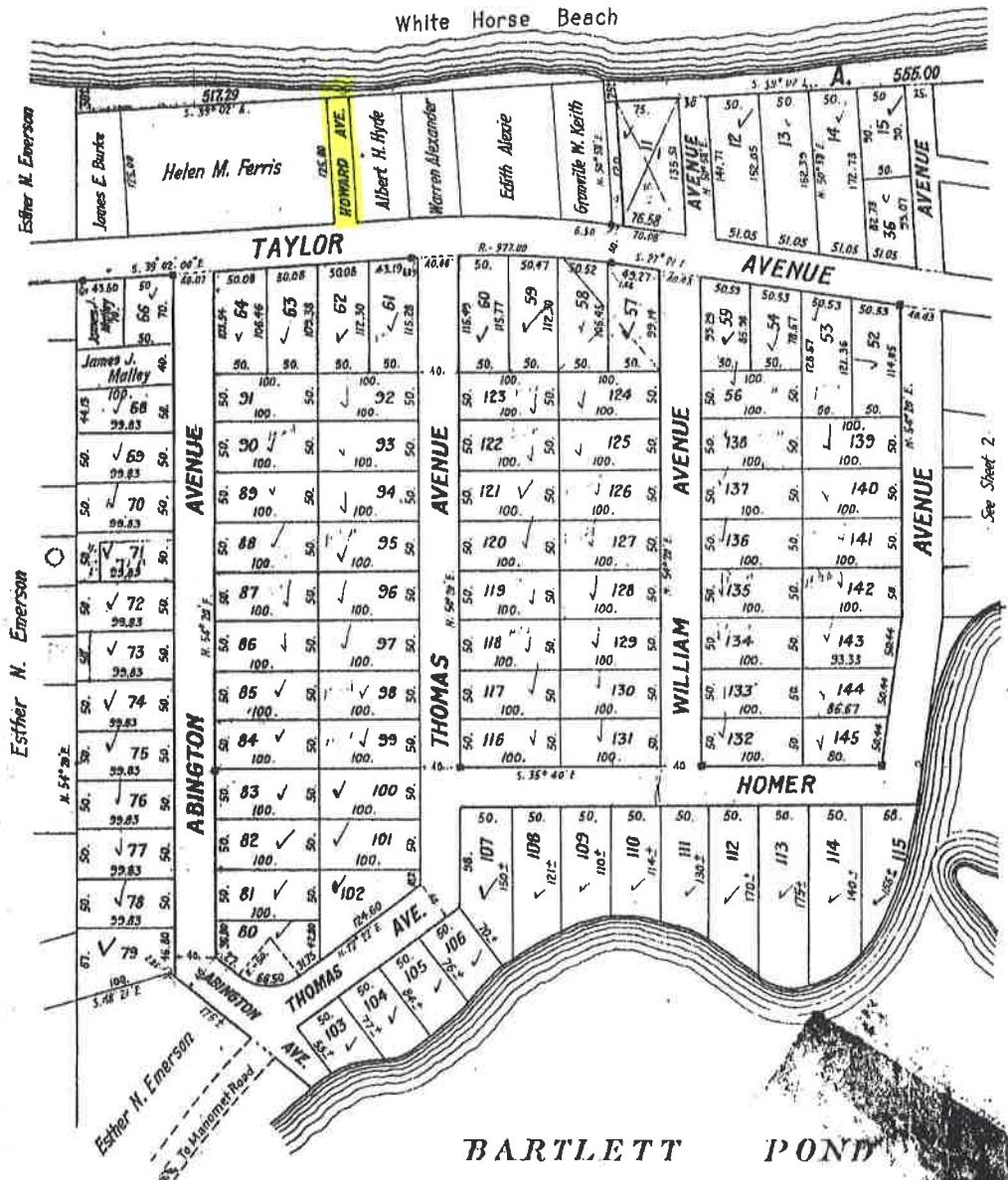
Plan of Land in Plymouth  
Scale 60 feet to an inch

NOV. 1923.

W. Archer Torrey, Surveyor.

*PLYMOUTH BAY*

## White Horse Beach



Separate certificates of title may be issued  
for lettered and numbered lots shown herein.  
By the Court *P. J. C.*

April 13, 1925

numbered lots shown hereon.  
Charles A. Southworth  
Recorder

THIS PLAN FILED WITH

CERTIFICATE No. 1991

Copy of part of plan

LAND REGISTRATION OFFICE

LAND REGISTRATION OFFICE  
EEB 19 1924

Scale of this plan 120 feet to an inch

C. B. Humphrey, Engineer for Court -



REVIEW

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七

THE BROOK ROAD

ARBORETUM ROAD

三

HONEY BEE L.

FOX LANE

## MEADOW GLEN LANE

10

AVENUE E

AVENUE A

TAYLOR M.

White Horse Beach

CAPE COD BAY

TOWN OF PLYMOUTH  
ASSESSORS MAP

45B





100208 - LOTS 100 & 110, C.R.R. 0657  
 100209 - LOTS 110 & 115, C.R.R. 172.  
 100210 - LOTS 110 & 115, C.R.R. 1710.

*Plan of Land in Plymouth*  
 Scale 60 feet to an inch

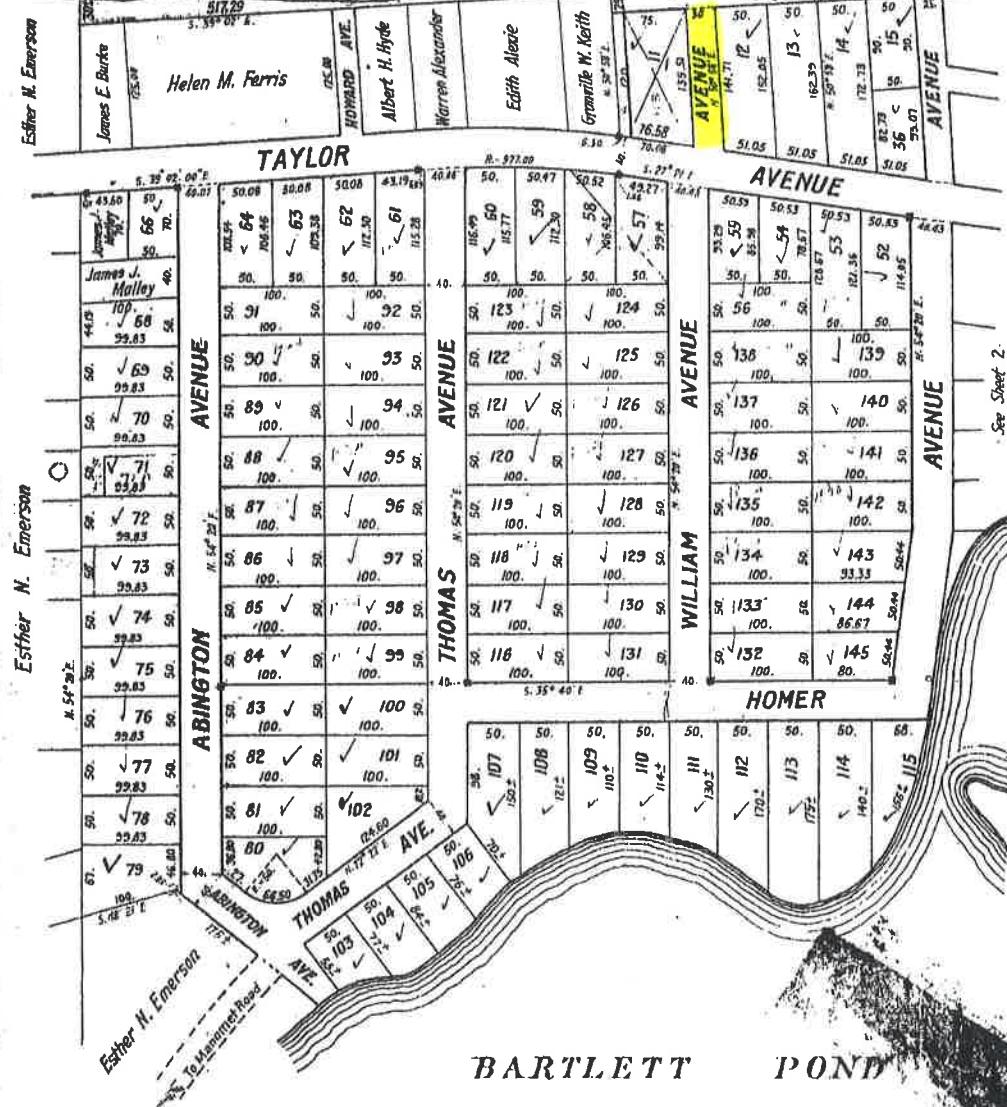
NOV., 1923.

W. Archer Torrey, Surveyor.

100201  
Sheet 1

## PLYMOUTH BAY

White Horse Beach



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 for lettered and numbered lots shown hereon.  
 By the Court.

April 12, 1926  
*Charles A. Southworth*  
 Recorder

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filed in

LAND REGISTRATION OFFICE

FEB. 14, 1924

Scale of this plan 120 feet to an inch

C. B. Humphrey, Engineer for Court



R330W10

二二〇三

RBORETUM ROAD

146 BROOK ROAD

HONEY BEE LAN

10 FOX LANE

MEADOW GLEN LANE

100

1000

## AVENUE C

THOMAS AVENUE

1001 LAGUNA AVENUE

OR AVENUE

卷之三

10

White House Speech

CAPE COD BAY

TOWN OF PLYMOUTH  
ASSESSORS MAP

45B



10020 A  
Sheet 2

10020 D - LOTS C, D, E, F, G + H - CERT. 3029  
 10020 F - LOTS 146A + 149A - CERT. 16626  
 10020 I - LOTS 152, 153, 154 - CERT. 14389  
 10020 K - LOTS 155, 157, 158 - CERT. 14487

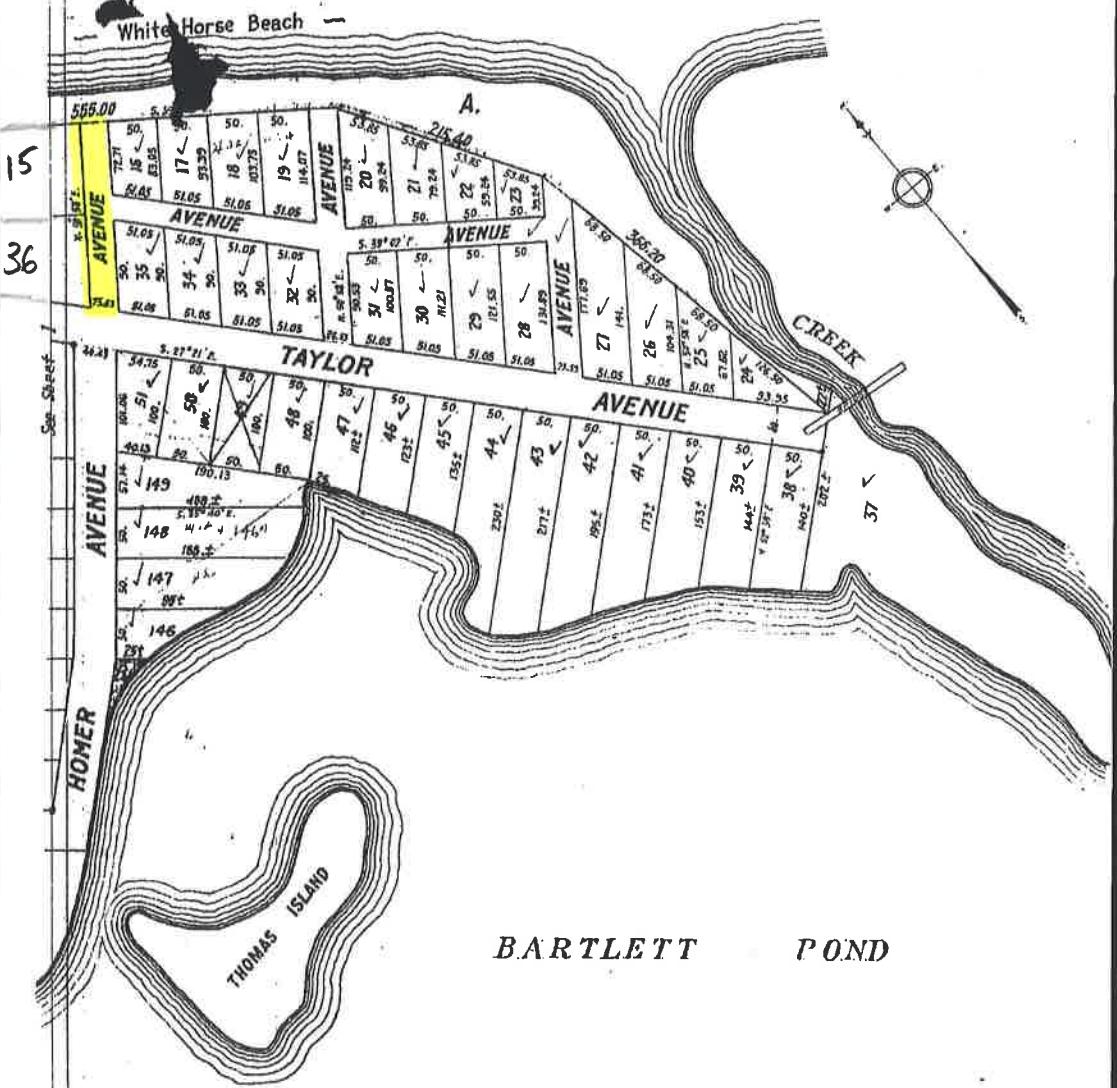
## Plan of Land in Plymouth

Scale 60 feet to an inch

NOV., 1923.

W. Archer Torrey, Surveyor.

## PLYMOUTH BAY



THIS PLAN FILED WITH  
CERTIFICATE No. 1991

Separate certificates of title may be issued  
for lettered and numbered lots as shown herein  
By the Court

April 13, 1925

*Charles A. Southworth*  
Recorder

Copy of part of plan filed in  
LAND REGISTRATION OFFICE  
FEB. 14, 1924.  
Scale of this plan 120 feet to an inch  
C. B. Humphrey, Engineer for Court ✓







10020 A  
Sheet 2

10020 D - LOTS C, D, E, F, G, + H - CERT. 3039  
 10020 F - LOTS 146A + 149A - CERT. 16626  
 10020 G - LOTS 152 thru 165 - CERT. 54339  
 10020 H - LOTS 166, 167 + 168 - CERT. 54407

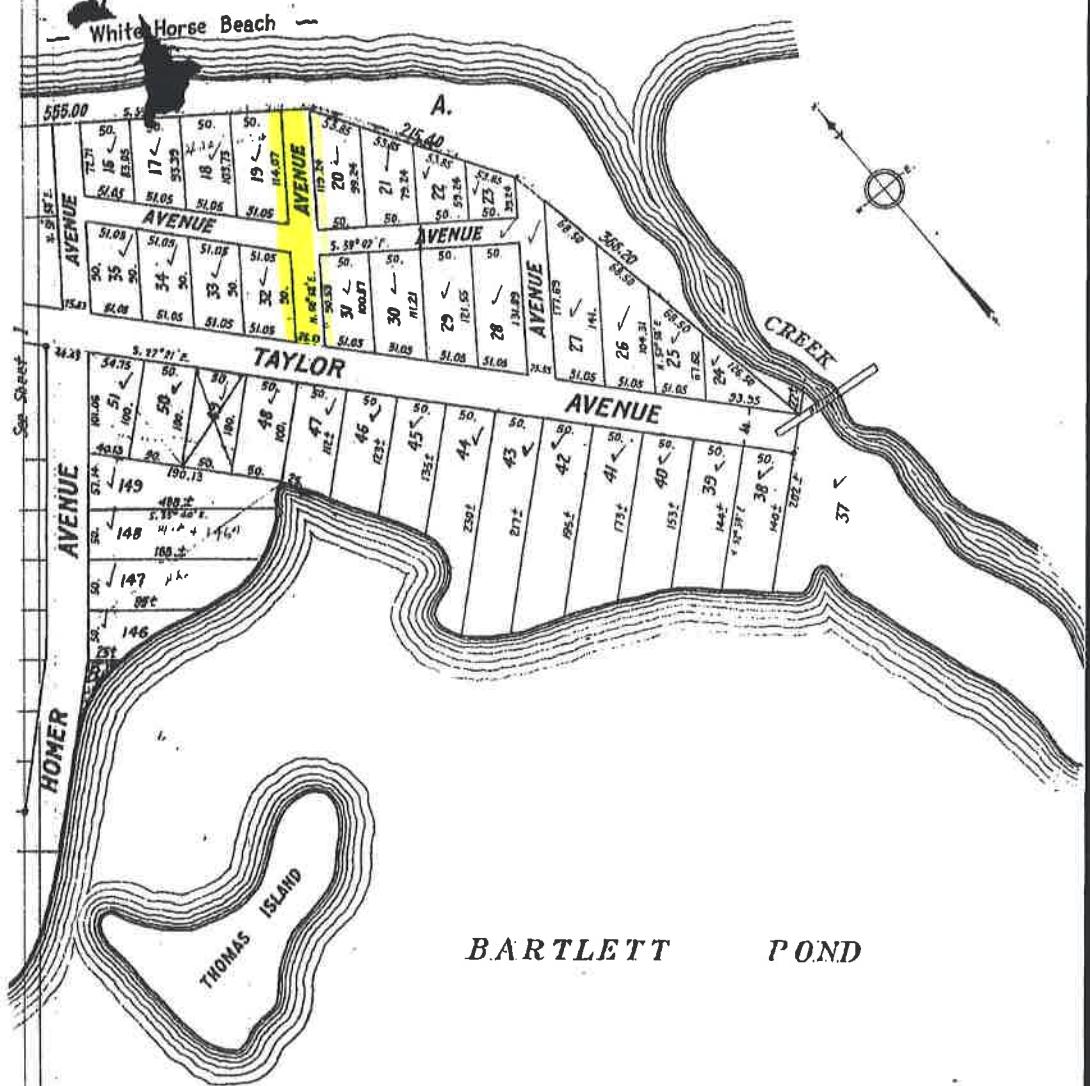
## Plan of Land in Plymouth

Scale 60 feet to an inch

NOV., 1923.

W. Archer Torrey, Surveyor.

## PLYMOUTH BAY



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April 13, 1925

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Recorder

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LAND REGISTRATION OFFICE  
FEB. 14, 1924.  
Scale of this plan 120 feet to an inch  
C.B. Humphrey, Engineer for Court ✓



10020N-1

EXHIBIT

12

ALL-STATE LEGAL

# CONDOMINIUM

10020N-1

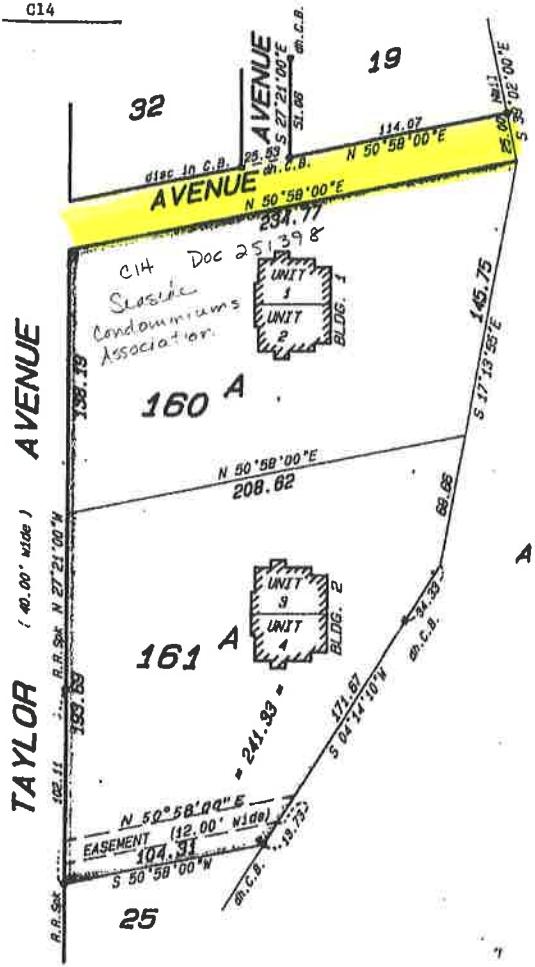
MODIFICATION PLAN OF LAND IN PLYMOUTH

Hood & Stefani Surveyors Inc., Surveyors

JAN 21, 1988

THIS PLAN FILED WITH  
CERTIFICATE NO. C14

FEB 5 1988



Modification of Lots 160 and 161  
Shown on Plan 10020-M  
Filed with Cert. of Title No. 72899 --  
Registry District of Plymouth County

For more details and descriptions of the units  
hereon see plans and deeds on file in the  
Registered Land Section of the Registry of Deeds  
and noted on the Master Condominium Certificate  
issued referring to this plan.

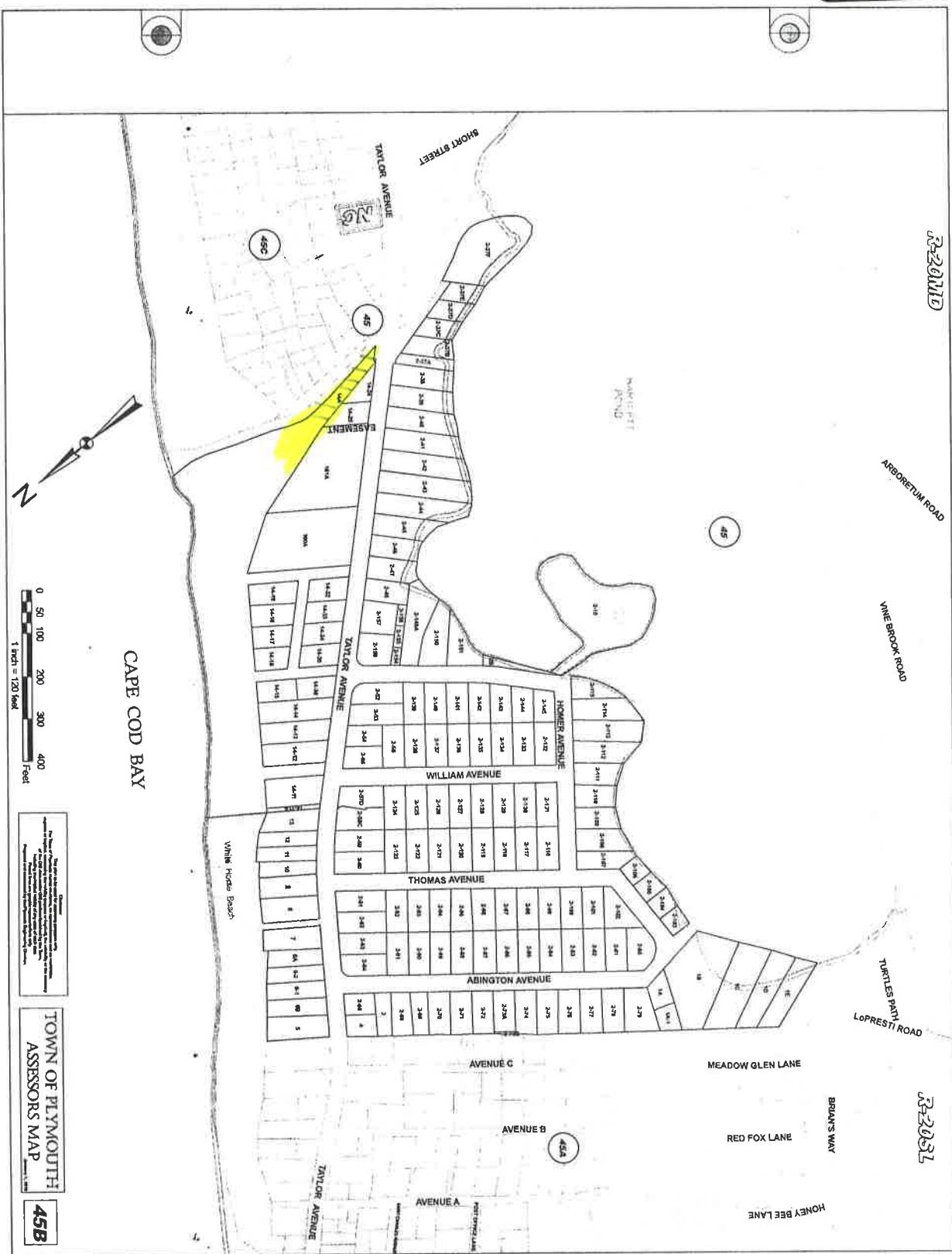
By the Court.

John W. Moore  
MAB 5-1988  
N.B.-89

Recd/cpr.

Copy of part of plan  
filed in  
LAND REGISTRATION OFFICE  
MAR 6, 1988  
Scale of this plan 80 feet to an inch.  
Louis A. Moore, Engineer for Court







10020 A  
Sheet 2

10020 D - LOTS C, D, E, F, G, + H - CERT. 8024  
 10020 F - LOTS 146A + 149A - CERT. 16626  
 10020 I - LOTS 152 THRU 165 - CERT. 16627  
 10020 K - LOTS 157, 158 - CERT. 16628

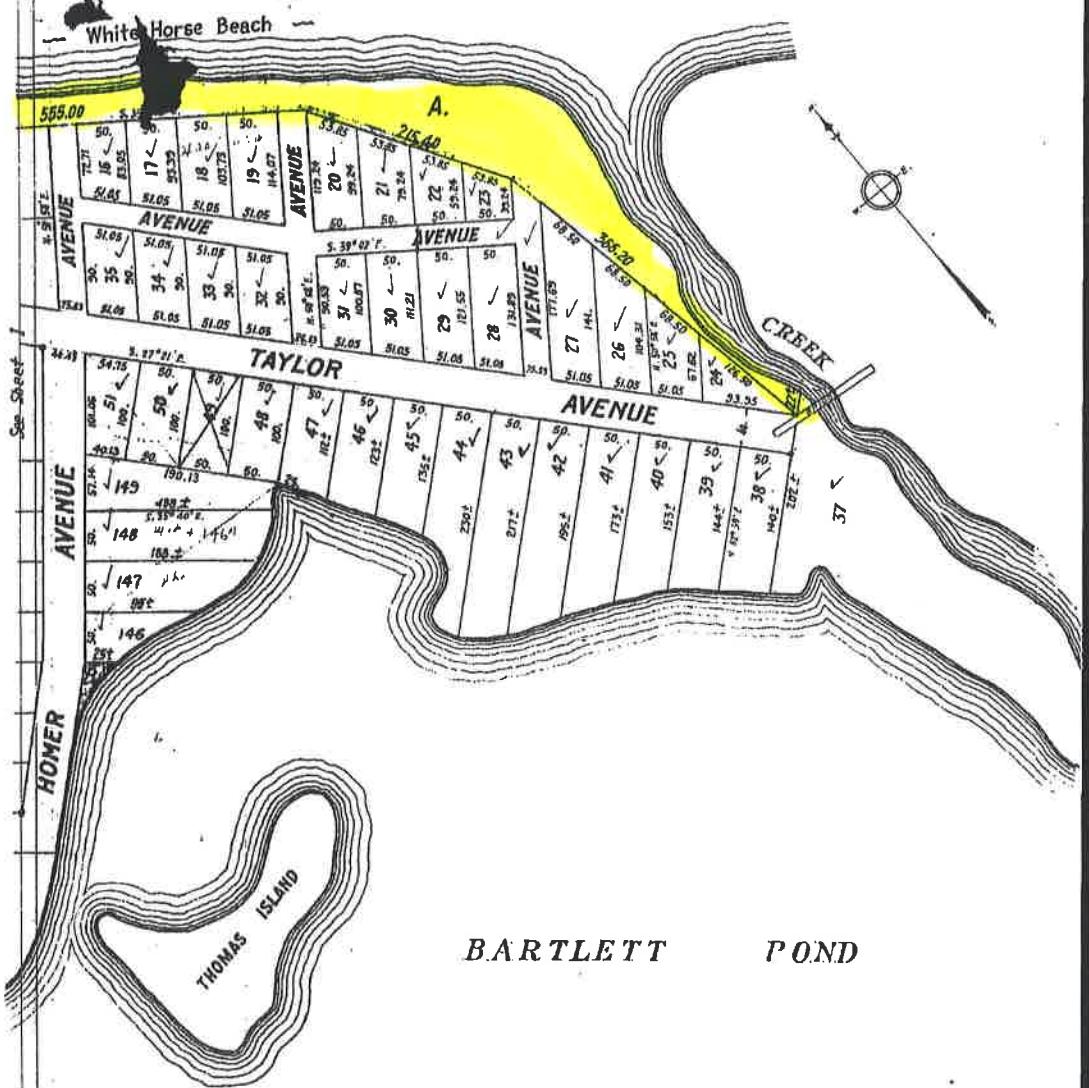
## Plan of Land in Plymouth

Scale 60 feet to an inch

NOV., 1923.

W. Archer Torrey, Surveyor.

## PLYMOUTH BAY



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By the Court

April 13, 1925

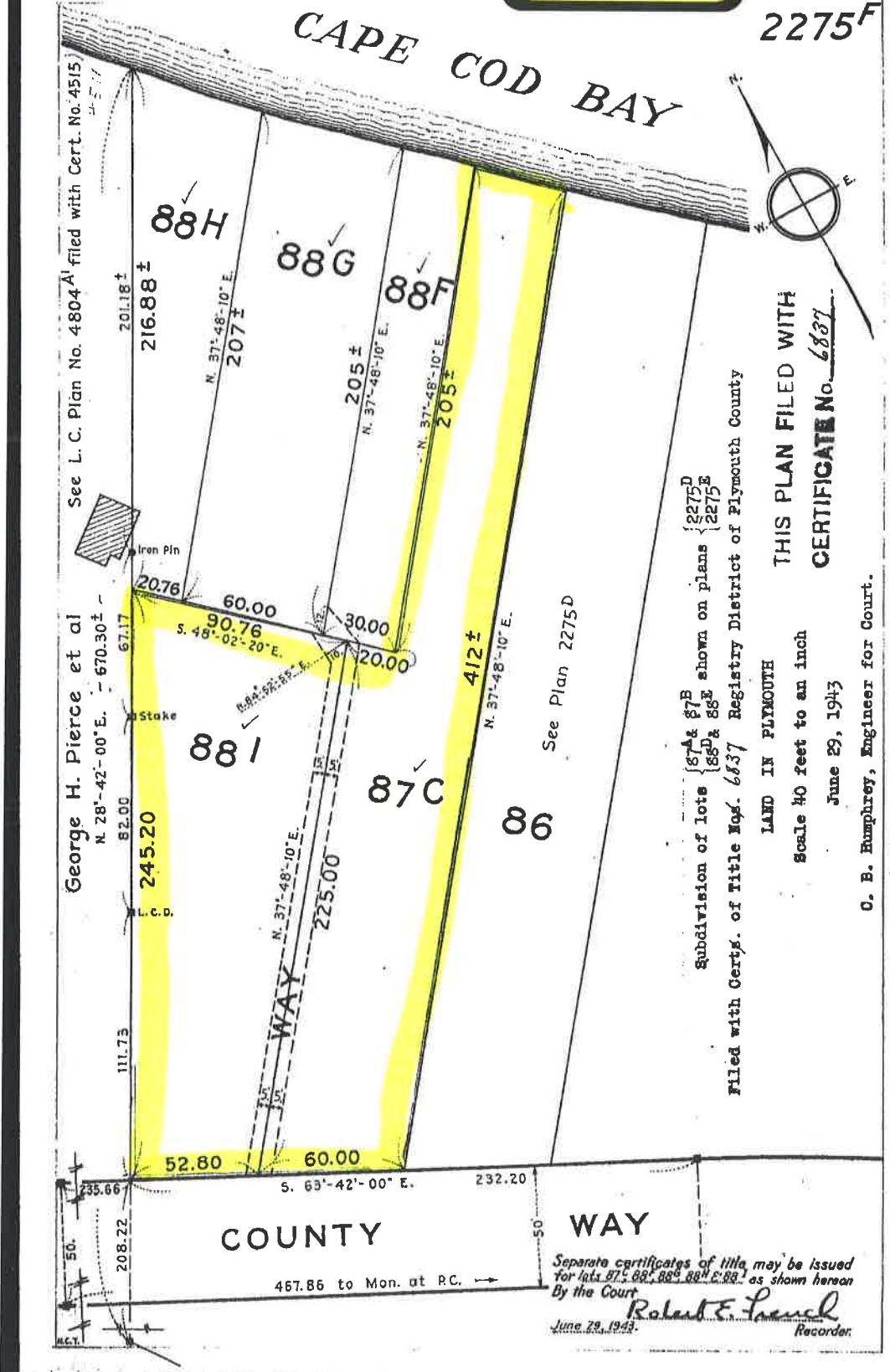
Charles A. Southworth  
Recorder

Copy of part of plan filed in  
LAND REGISTRATION OFFICE  
FEB. 14, 1924.  
Scale of this plan 120 feet to an inch  
C. B. Humphrey, Engineer for Court ✓















10020 D - LOTS C, D, E, F, G, + H - CERT. 3024  
 10020 F - LOTS 146A + 148A - CERT. 16626  
 10020 I - LOTS 152 thru 155 - CERT. 16627  
 10020 K - LOTS 156, 157 + 158 - CERT. 16628

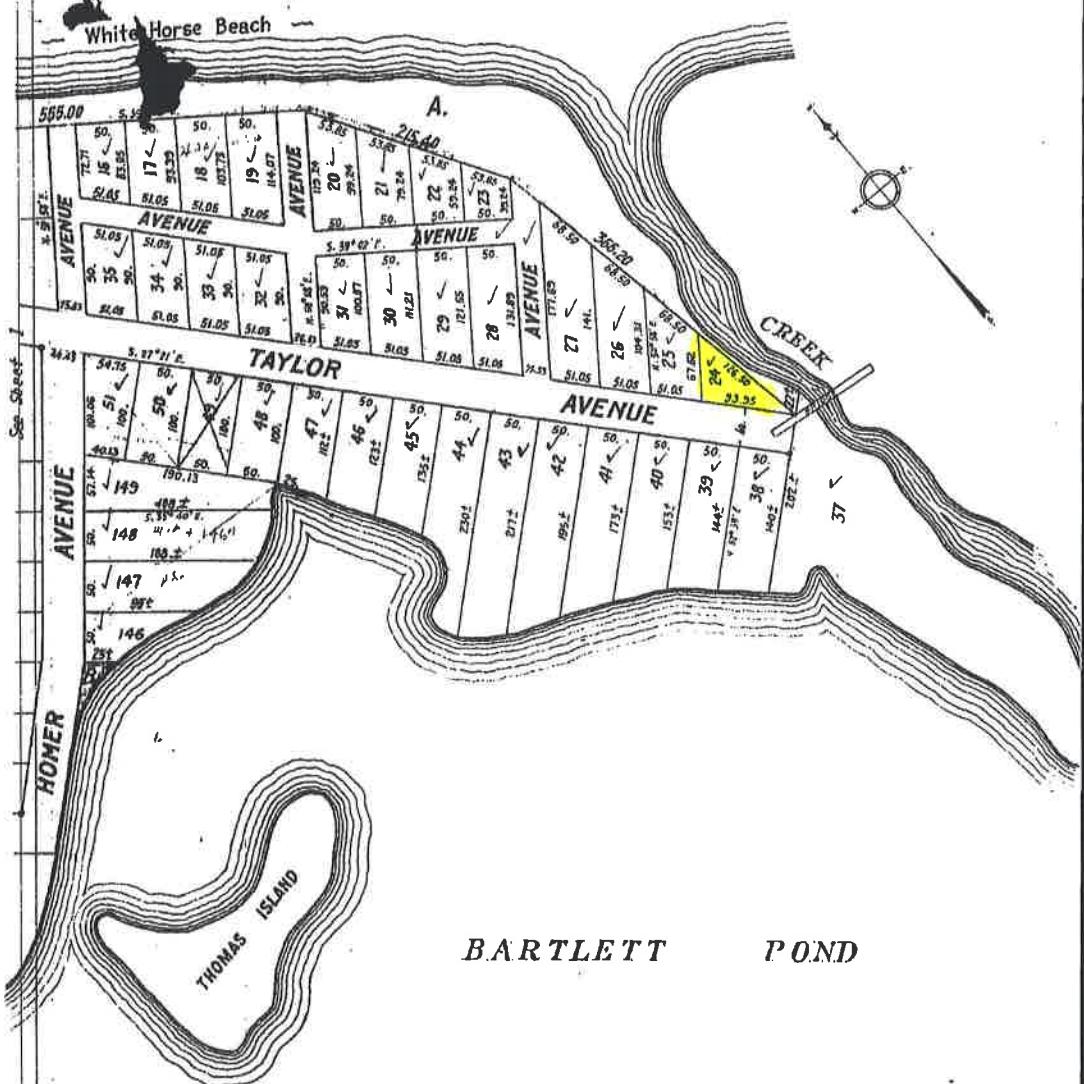
*Plan of Land in Plymouth*

Scale 60 feet to an inch

NOV., 1923.

W. Archer Torrey, Surveyor.

PLYMOUTH BAY



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April 13, 1925

Charles A. Southworth  
 Recorder

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 C.B. Humphrey, Engineer for Court ✓