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RECEIVED TOWN CLERK
GRAFTON, MA

2020 SEP -3 AM 10:44

Mark B. Johnson (MA, NH, DC)
Donald F. Borenstein (MA, ME, NH)

Gregory R. Richard (MA, NH)
Kathleen M. Heyer (MA, NH)
Thomas D. Orr (MA)
Gordon T. Glass (ME, MA)

Of Counsel
Robert W. Lavoie (MA, NH)

Paralegals
Karen L. Bussell
Lianne Patenaude
Ellen M. Melvin
Tina M. Wilson

August 29, 2020

Via Hand Delivery

Kandy Lavallee
Town Clerk
30 Providence Road
Grafton, MA 01519

**Re: Renewed Application for Determination of Completeness & Request for Public
Acceptance of Subdivision Roadways – High Point Estates**

Dear Clerk Lavallee,

I represent Adams Road Company, LLC ("Applicant") in connection with its renewed Application for a Determination of Completeness and Request for Public Acceptance of Subdivision Roadways ("Application") concerning the High Point Estates subdivision ("Subdivision").¹ As such, I write this letter to summarize the key contents² of the enclosed Application.

I. Response to Comments from Graves Engineering, Inc.

The Applicant's team has taken action in response to each of the outstanding comments from the Town's peer review consultant, Jeff Walsh of Graves Engineering, and provided written responses and related documentation. Special attention has been given to Graves Engineering's

¹ The Application is made under § 3.3.11.3 of the Grafton Subdivision Regulations.

² This letter highlights those documents which are responsive to the Grafton Zoning Board of Appeals ("Zoning Board")'s request for supplementation to Applicant's original Application for a Determination of Completeness, as such request was memorialized in Attorney Dan Hill's letter to me dated July 17, 2020.

Comment 31 regarding stormwater concerns at the intersection of Arrowwood and Highpoint. The Applicant is awaiting confirmation from Mr. Walsh regarding his satisfaction with the Applicant team's response to his comments.

II. Grafton Water District Compliance Certification

Applicant has enclosed a letter from Matthew Pearson, Manager of the Grafton Water District ("District"), dated June 24, 2020. Said letter states that Applicant has "met all the conditions" required by the District for the Subdivision and the District is "completely satisfied with the work."

III. Certificate of Good Standing Issued by Grafton Treasurer

Applicant has enclosed a Certificate of Good Standing ("Certificate") issued on July 10, 2020, by Beth Schrottman, Administrative Clerk of the Grafton Treasurer. Said Certificate certifies there are no outstanding taxes owed for the Subdivision.

IV. Grafton Conservation Commission Certificates of Compliance

Applicant has enclosed a Grafton Wetlands Protection By-Law Certificate of Compliance for the Subdivision, which was issued by the Grafton Conservation Commission ("Commission"), dated June 19, 2020, and recorded with the Worcester District Registry of Deeds ("Registry") at Book 62655, Page 371.

Applicant has also enclosed a Massachusetts Wetlands Protection Act Certificate of Compliance for the Subdivision, which was issued by the Commission, dated June 19, 2020, and recorded with the Registry at Book 62655, Page 378.

V. Easements Affecting Detention Basin Behind Lots 48 and 49

Applicant has enclosed a letter from myself to the Zoning Board, dated June 28, 2020. Said letter addresses the status of the easements affecting the detention basin behind Lots 48 and 49 of the Subdivision.

Very truly yours,

JOHNSON & BORENSTEIN, LLC

Donald F. Borenstein

Donald Borenstein

Cc: Grafton Planning Board *via First Class Mail*
Grafton Zoning Board of Appeals *via First Class Mail*

Enclosures- see List of Documents Submitted attached hereto

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June 28, 2020

Via E-mail – koshivosk@graston-ma.gov
Town of Grafton
Zoning Board of Appeals
c/o Katrina Koshivos
30 Providence Road
Grafton, MA 01519

Re: High Point Estates, Lot 49 – Status of Easements

Dear Chairperson McCusker and Zoning Board of Appeals Members,

As you are aware, I represent Peter Hingorani and Adams Road Trust regarding the High Point Estates subdivision (“Subdivision”).

At the Board’s recent meeting regarding the Subdivision, the Board and its consultants expressed concern that a portion of detention basin #4 may encroach onto Subdivision Lot 49, outside of any easement area. I understand from that discussion that the Zoning Board may consider Lot 49 in the Subdivision to be subject only to a single easement, the 15’ Access Easement as shown on a so-called subdivision modification plan entitled “Plan Modifying Subd. Easements High Point Estates, Grafton, MA” dated March 13, 2017, and recorded in the Worcester District Registry of Deeds (“Registry”) in Plan Book 925, as Plan 101 (“2017 Modification Plan”). However, I write to explain why said Lot 49 is instead subject to two easements, the 15’ Access Easement and the 20’ Drainage Easement, both as shown on the original subdivision plan approved by the Board and entitled “Overall Project Plan High Point Estates Subdivision Grafton, Massachusetts” dated May 12, 2005, and recorded in the Registry in Plan Book 850, as Plan 64 (“2005 Original Plan”), and to explain that there has never been an effective extinguishment of either easement.

Under Massachusetts law, the recording of a plan alone, absent additional action taken by the party who recorded said plan, cannot effectuate either the creation or termination of easement rights:

- 1) To reserve or convey easement rights as shown on a recorded plan, the plan must not only be recorded but the recorded plan must additionally be referenced in a deed or other instrument by which property is conveyed. See Reagan v. Brissey, 446 Mass. 452, 458-60 (2006); Tattan v. Kurian, 32 Mass. App. Ct. 239, 245-46 (1992).
- 2) Easement rights may be terminated: a) by the easement holder, via grant, release, abandonment, or estoppel; b) by a third party, via prescription/adverse possession; or c) generally, via merger of the dominant and servient estates. See Delconte v. Salloum, 336 Mass. 184, 188 (1957); Cheever v. Graves, 32 Mass. App. Ct. 601, 606 (1992). However, the recording of a plan alone does not by itself extinguish (or create) easement rights.

By deed dated August 7, 2017, and recorded in the Registry at Book 57558, Page 282, Adams Road Company, LLC conveyed Lot 49 in the Subdivision to Srinivasa R. Bayya and Swathi Burugu, the current owners of Lot 49. This deed did not refer to the 2017 Modification Plan but instead referred only to the 2005 Original Plan and described the premises as follows:

"The land in Grafton, Worcester County, Massachusetts, being shown as Lot 49 located on High Point Drive as shown on a Plan of Land entitled, 'High Point Estates Subdivision, Grafton, Massachusetts' recorded with Worcester County (Worcester District) Registry of Deeds, Plan Book 850, Plan 64, Sheets 1-8. Said Lot 49 containing 22,708.5 square feet of land, more or less, as shown on said Plan."

Where the 2017 Modification Plan was never referenced in the deed conveying Lot 49, the extinguishment of easements referenced on that plan had no effect. Where the 2005 Original Plan was explicitly referenced in the deed conveying Lot 49 and the property conveyed was only described by reference to that plan, both the 15' Access Easement and the 20' Drainage Easement over Lot 49, as shown on the 2005 Original Plan, were created and reserved by Adams Road Company, LLC.

The 15' Access Easement and the 20' Drainage Easement over Lot 49, as shown on the 2005 original subdivision plan, have not been terminated by grant, release, abandonment, estoppel, prescription, or merger. As such, these easements remain in full force and effect today. Importantly, the outcome outlined above is consistent with the Zoning Board and my client's intent, as the 2017 Modification Plan erroneously shows that the 20' Drainage Easement over Lot 49 is to be extinguished instead of the 15' Access Easement that the Board approved to be extinguished in its 2017 modification decision.

I would be happy to discuss this issue further with the Board's legal counsel. Thank you for your time and consideration.

Very truly yours,

JOHNSON & BORENSTEIN, LLC

/s/

Donald Borenstein

PUBLIC HEARING NOTICE
GRAFTON PLANNING BOARD

Pursuant to the Comprehensive Permit issued by the Grafton Board of Appeals, Section III Decision, (A. 8), dated December, 24, 2002, under MGL Chap. 40B, the Grafton Planning Board will hold a public hearing on DATE, MONTH DATE, 2020 at 7:30 PM, to consider the status of completion of the High Point Estates Subdivision roadways and infrastructure and consider a recommendation to the Grafton Board of Selectmen to issue a Warrant article concerning public acceptance by the Town of the Subdivision roadways and infrastructure at the Fall 2020 Town Meeting, shown as Grafton Assessor's Map41, Parcels 4 and 15, and Map 41 and Parcel 4A. The Applicant/Owner is Adams Road Trust, of 51 Mount Joy drive, Tewksbury, MA. 01876.

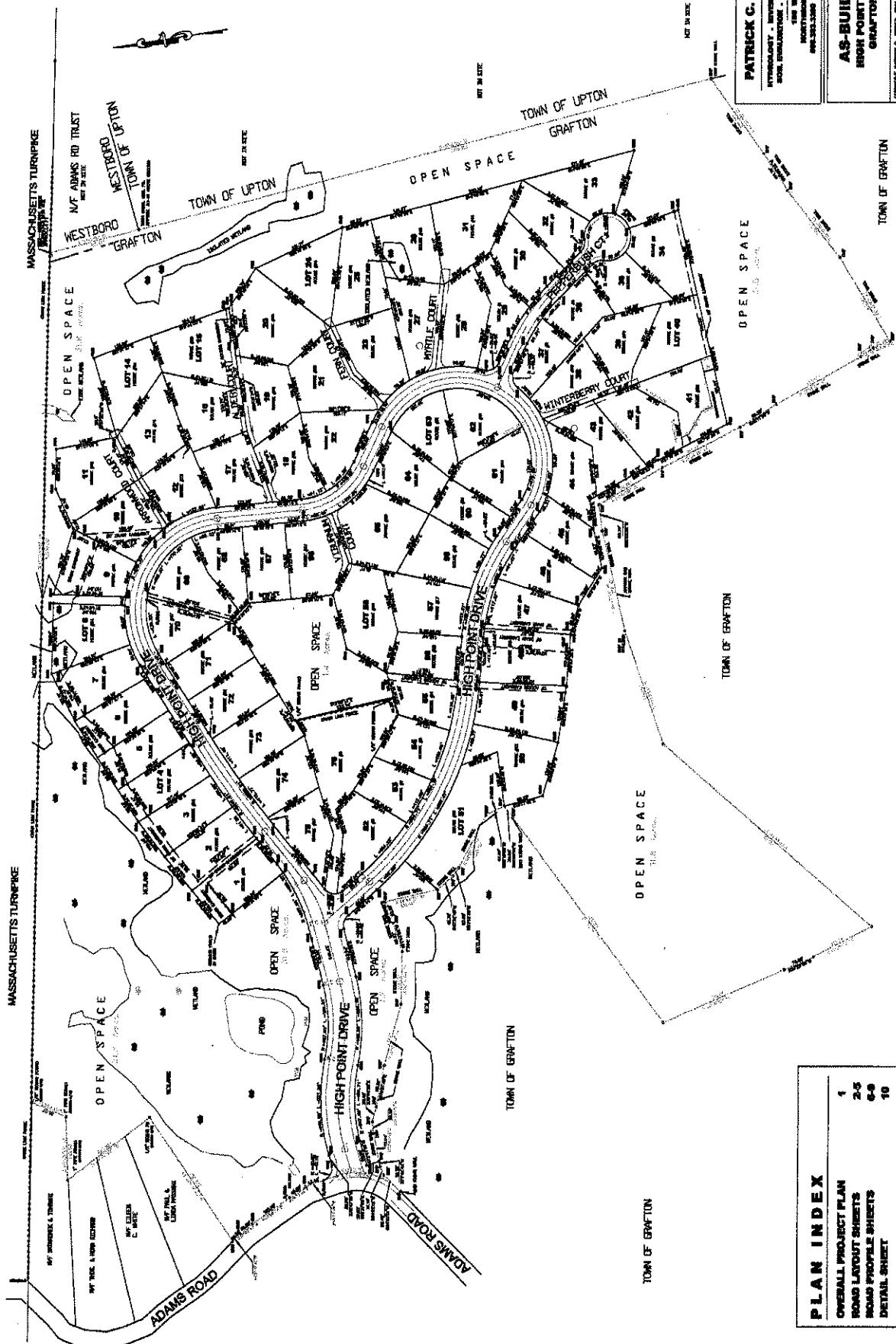
Copies of the application and plans are available for public inspection at Planning Board offices at Municipal memorial bldg., 30 Providence Street, Grafton, MA. 01519.

Pursuant to Governor Baker's March stay at Home advisory, this meeting will be conducted via remote participation. Please see <http://www.grafton-ma.gov/planning-board> for more information.

GRAFTON PLANNING BOARD

Robert Hassinger, Chairman.

MASSACHUSETTS TURNPIKE
 WESTBORO
 WESTBORO
 WESTBORO



PATRICK C. GARNER CO., INC.
 HYDROLOGY - WATER ANALYSIS - WETLAND SCIENCE
 SOIL ENGINEERING - LAND SURVEYING - PLANNING
 100 WINTERBERRY STREET
 WESTBORO, MASSACHUSETTS 01581
 TEL: 508-853-1100

AS-BUILT LOT LAYOUT
 HIGH POINT ESTATES SUBDIVISION
 GRAFTON, MASSACHUSETTS

PROJECT NO.	693-1-95	SCALE	1" = 100 FT.
DATE	DEC. 15, 2015	PROJECT NO.	693-1-95
REVISIONS	NO. 1	DATE	JAN. 9, 2016
		DATE	MAY 24, 2016
		DATE	MAY 1, 2016

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ROAD LAYOUT SHEETS	2-5
ROAD PROFILE SHEETS	6-9
DETAIL SHEET	10

From: Tim Barlow tbuilding@aol.com
Subject: Fwd: Highpoint completion review JW
Date: Sep 3, 2020 at 12:17:41 PM
To: Peter Hingorani TRUSTCORP@aol.com

4 A

Sent from my iPhone

Begin forwarded message:

From: Barlow Building <tbuilding@aol.com>
Date: August 27, 2020 at 2:40:19 PM EDT
To: "trustcorp@aol.com" <trustcorp@aol.com>, "patrickgarner@me.com" <patrickgarner@me.com>
Subject: Highpoint completion review JW
Reply-To: Barlow Building <tbuilding@aol.com>

Hi Peter, Pat,

R&C

My Answers to JW attached report.

Work to be done

#3 Lot 52 tree has been planted. Street trees COMPLETE

#13 Cross seed of disturbed area around basin 4 with a straw cover to retain moisture to promote growth COMPLETE

#17 Loose Turf Matt removed COMPLETE

#20 Trails COMPLETE

#24 Annual cleaning of CB's has been conducted on 8/27/20. DMH I to DMH H-1, 18" pipe line is clear and clean. COMPLETE

#27 We have continued to monitor during high rain events flow and runoff from open space over lot 76 and find flow and runoff to be non existent. Please see reports from PCG. COMPLETE

#28 COC Has been recorded. See Bk62655 Pg371 & Bk62655 Pg 379 at Worcester Registry of Deeds. COMPLETE

#31 A water test as described by JW has been conducted. Observed by JW and DPW director. COMPLETE

PATRICK C. GARNER
Company, Inc.

HYDROLOGY • RIVER ANALYSIS • WETLAND SCIENCE • SOIL
EVALUATION • DESIGN & PERMITTING • PEER REVIEW
109 WHITNEY STREET, NORTHBOROUGH, MA 01532
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INSPECTION REPORT LOT 76

Grafton, MA

LOCATION: High Point Estates
INSPECTION DATE: Aug 24 2020

REPORT DATE: Aug 25 2020
INSPECTOR: Patrick Garner

GENERAL COMMENTS

This report follows a 1.32-inch storm that fell on the area on 8/23/20.

- My firm continues to make these inspections whenever the area receives storms of 1" or greater.
- The purpose of the inspections is to observe whether scouring or erosion has occurred onto Lot 76.
- During my visit yesterday, approximately 14 hours after the storm, I observed no scouring or erosion. No sediment appeared to have been transported down the shallow channel beside the southern property line of Lot 76.
- The upper settling basin on Lot 56, which when it overflows releases stormwater into the shallow channel noted above, showed no evidence of flow. Rip-rapped sides were not stained.

SEE BELOW PHOTOS AND CAPTIONS



Fig. 1. Channel above Lot 76. No leaf litter.



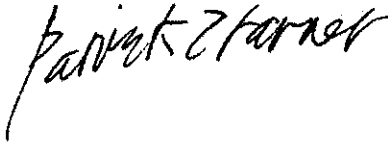
Fig. 2. Walkway into Open Space above Lot 76. No scouring or staining was observed on either side of gravel.



Fig. 3. View into southeast rear corner of Lot 76. Note that silt fence has not been maintained, and channel is filled with leaves from the fall of 2019, indicating that no erosive flows have occurred in more than 10 months.

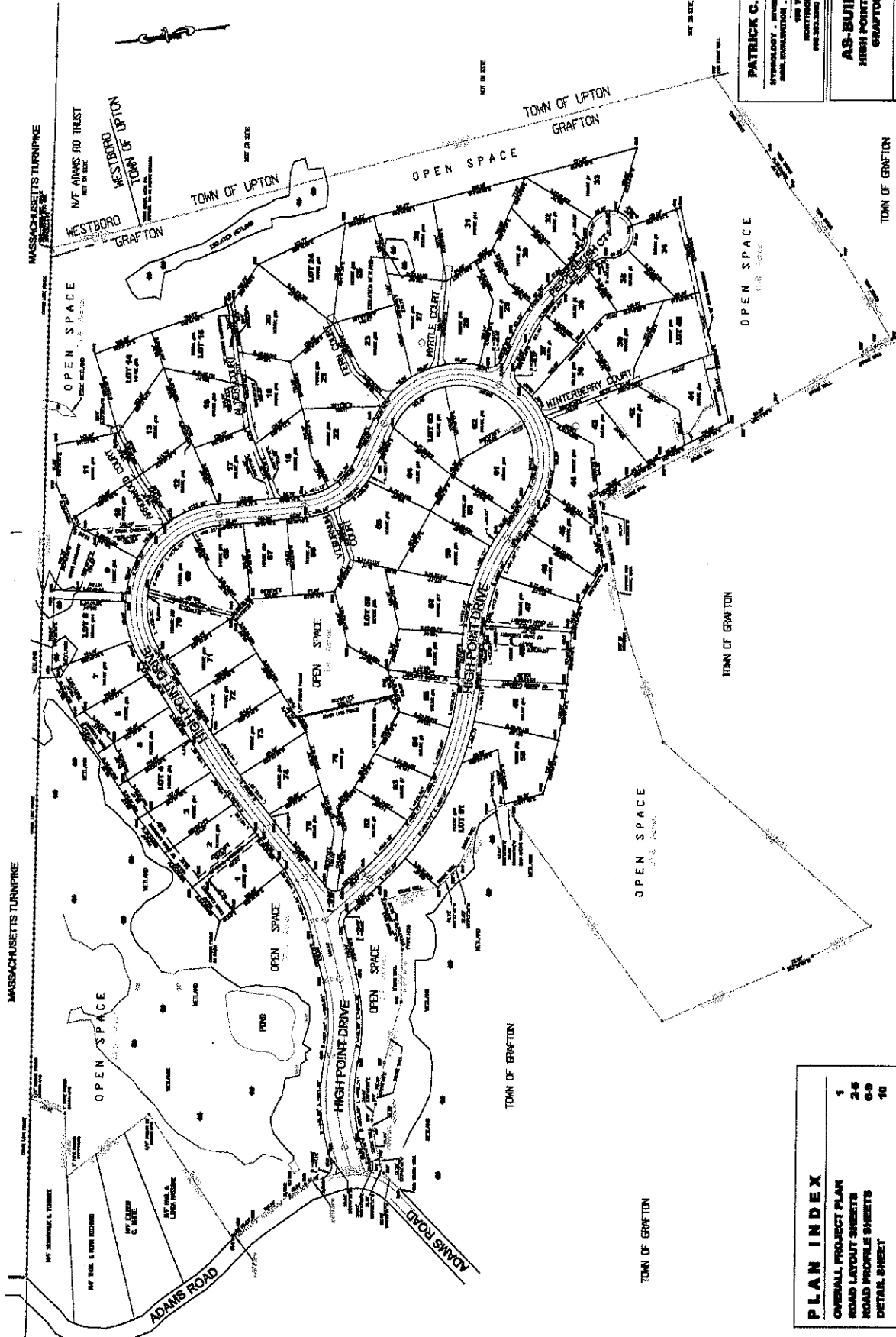
Please contact me with any questions.

Thanks,

A handwritten signature in black ink that reads "Patrick Garner". The signature is written in a cursive style with a large initial 'P' and a long horizontal stroke.

Patrick Garner, PLS
Hydrologist

MASSACHUSETTS TURNPIKE
 WESTBORD TOWN OF UPTON
 WESTBORD TOWN OF UPTON
 WESTBORD TOWN OF UPTON



PATRICK C. GARNER CO., INC.
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 100 WESTBURY STREET
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 TEL: 508.333.2200

AS-BUILT LOT LAYOUT
 HIGH POINT ESTATES SUBDIVISION
 GRAFTON, MASSACHUSETTS

OWNER	PROJECT NO.	DATE	SHEET NO.
TRUSTEES OF THE MASSACHUSETTS TURNPIKE	695-1-00	JUN 4, 2003	9
DATE	DATE	DATE	DATE
JUN 28, 2003	MAY 29, 2003	MAY 29, 2003	MAY 29, 2003
SCALE	1" = 400 FT.		

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