

# City of New Bedford ZBA ADMIN. APPEAL APPLICATION

CASE #: 4236

## 1. SUBMITTAL CHECKLIST

The following documentation must be submitted, in duplicate (1 Original and 11 Copies):

Have you included...			Planning staff review finds...	
Yes	No		Yes	No
<input type="checkbox"/>	<input type="checkbox"/>	A <u>Completed and Signed Application</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	An <u>Existing Conditions Site Plan</u> , drawn to a scale not less than 1 inch: 40 feet, identifying positioning of existing structures must be provided. Your site plan must show footprint and dimensions of rear, front and side distances between structure(s) and boundary lines.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	A <u>Proposed Site Plan</u> showing all proposed alterations or additions with side, front and rear set property lines identified.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	A <u>Certified Abutter's List</u> prepared by planning staff and certified by the Assessor's Office.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<u>Plot Plan</u> as provided through Department of Inspectional Services or through the Assessor's Office (in person or online through parcel lookup).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<u>Filing Fee</u> in check form made payable to the City of New Bedford.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	Documentation of the <u>Decision</u> that aggrieves the applicant and is being appealed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<u>Owner's Verification</u> including owner's signature and parcel deed for all involved parcels.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### Official Use Only:

Review of submittal compliance performed by \_\_\_\_\_ of the city's Division of Planning.

Staff review found the application packet to be  complete  incomplete on this date: \_\_\_\_\_.

Please remove the instruction pages when submitting your completed application packet but keep this as your first page.

This is page 1 of your ZBA Application.

## 2. ADMINISTRATIVE APPEAL SPECIFICS

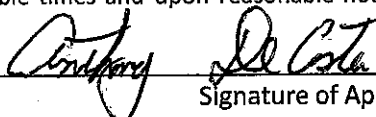
7/16/16 10:23:39

The undersigned petitions the New Bedford Zoning Board of Appeals [ZBA] for an ADMINISTRATIVE APPEAL in the manner and for the reasons set forth here under the provisions of the city's zoning ordinance to the following described premises:

### APPLICATION SUMMARY (PLEASE PRINT)

SUBJECT PROPERTY			
ASSESSOR'S MAP PLOT#	124	LOT(S)#	27
REGISTRY OF DEEDS BOOK #:	5664	PAGE #	303
PROPERTY ADDRESS: 1861 Shawmut Ave. New Bedford			
ZONING DISTRICT: Industrial B			
OWNER INFORMATION			
NAME: Anthony R. De Costa			
MAILING ADDRESS: 1861 Shawmut Ave. New Bedford, MA 02740			
APPLICANT/CONTACT PERSON INFORMATION			
NAME (IF DIFFERENT): Thomas P. Crotty, Esq.			
APPLICANT'S RELATIONSHIP TO THE PROPERTY: Check one:	OWNER <input checked="" type="checkbox"/>	CONTRACT VENDEE <input type="checkbox"/>	OTHER Describe <input type="checkbox"/> _____
MAILING ADDRESS (IF DIFFERENT): 388 County Street, New Bedford, MA 02740			
TELEPHONE #	508-990-9101		
EMAIL ADDRESS:	tomcrotty@tcrottylaw.com		

By signing below, I/we acknowledge that all information presented herein is true to the best of my/our knowledge. I/we further understand that any false information intentionally provided or omitted is grounds for the revocation of the approval(s). I/we also give planning division staff and ZBA members the right to access the premises (both interior and exterior) at reasonable times and upon reasonable notice for the purpose of taking photographs and conducting other visual inspections.


5/31/16  
 \_\_\_\_\_  
 Signature of Applicant/s Date

**If the applicant differs from the owner, this section must be completed/signed by the property owner/s:**

I hereby authorize the applicant represented above and throughout this application to apply and to represent my/our interests on my/our behalf for the relief requested herein for the premises I/we own noted as "property address" above and presented throughout this application. Furthermore, by signing this application I/we acknowledge having read and understood this application and the accompanying instructions and information. If petition is granted, I/we understand the approvals are specific to the plans submitted, unless the Board states otherwise and that if granted, that the special permit must be recorded and acted upon within one year.

\_\_\_\_\_  
 Signature of Owner/s Date

**APPLICATION SPECIFICS**

DIMENSIONS OF LOT/S:	FRONTAGE 316.8	DEPTH 2277.87	AREA in SQ FT 418,902.9		
EXISTING BUILDING/S	# OF BLDGS 3	EXISTING SIZE 28 x 24	TOTAL SQ FT BY FLOOR 672	NUMBER OF FLOORS 2	TOTAL SQ. FT ENTIRE STRUCTURE 1344
	# OF DWELLING UNITS 1		# OF BEDROOMS 3		
PROPOSED BUILDING/S	# OF BLDGS N/A	PROPOSED SIZE	TOTAL SQ FT BY FLOOR	NUMBER OF FLOORS	TOTAL SQ. FT ENTIRE STRUCTURE
	# OF DWELLING UNITS		# OF BEDROOMS		EXTENT OF PROPOSED ALTERATIONS
EXISTING USE OF PREMISES:	Contractor's Yard				
PROPOSED USE OF PREMISES:	Same				
EXPLAIN WHAT MODIFICATIONS YOU ARE PROPOSING THAT NECESSITATE THE REQUESTED SPECIAL PERMIT:	N/A				

*If there's a commercial use existing and/or proposed, please complete the following:*

	EXISTING	PROPOSED
NUMBER OF CUSTOMERS PER DAY	N/A	
NUMBER OF EMPLOYEES		
HOURS OF OPERATION		
DAYS OF OPERATION		
HOURS OF DELIVERIES		
FREQUENCY OF DELIVERIES (Check frequency)	<input type="checkbox"/> DAILY <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER	<input type="checkbox"/> DAILY <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER

*If you are also requesting site plan review and special permit/s from the planning board, please specify here:*

N/A

### 3. PARCEL LEGAL DOCUMENTATION

Title Reference to Property See deed attached  
(Attach copy of Deed, Certificate of Title & most recent Recorded Plans showing affected lot or lots)

Is the applicant also the owner?  Yes  No

If no, please attach the following three items to your application and indicate they are attached:

- A notarized authorization letter on letterhead from the owner to tenant/buyer for application of this permit.

If the Applicant is Not the Owner, Provide:

- A copy of the Purchase & Sale Agreement or lease, where applicable.
- A copy of the deed or deeds of abutting parcels if said parcels have been held in common ownership with the subject property at any time since January 1, 1976.

# 4. REQUIRED INFORMATION FOR ADMINISTRATIVE APPEAL

Under Massachusetts General Law Chapter 40A Section 7, 8, and 15 anyone who has been denied a building permit or enforcement action from any administrative officer may apply for an administrative appeal.

In order for the Board to make a determination the following must be included:

- A** Documentation of the decision being appealed
- B** Narrative explaining your case for the decision being overturned

The full text of M.G.L. Chapter 40A, Sections 7, 8, and 15 can be viewed at: <http://www.mass.gov/legis/laws/mgl/>

Because the ZBA must be able to articulate their findings on your appeal, you must describe your case and reasoning for the decision to be overturned. ***This is an extremely important part of your application and it is recommended that you answer this VERY carefully.*** You may use an additional sheet if needed.

**A** Describe the decision being appealed (attach documentation of the decision being appealed):  
 Cease and Desist Order Dated April 29, 2016 (copy attached)

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**B** Explain the reasons for the decision to be overturned:  
 See statement attached.

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#### **4B the reasons for the decision to be overturned:**

The property is owned by Anthony DeCosta. It is used by his business, A-1 Asphalt. That business has been located on that property since 1963 when the company was started by Mr. DeCosta's father, Charles DeCosta, Sr.

A-1 Asphalt is a contractor, and uses the property primarily as its contractor's yard. It began operating its asphalt paving business from this property in 1963. The company contracts to build new paved surfaces (driveways, parking lots, roads etc.), and also to replace existing paved surfaces. In both cases the project will involve excavating the site whether it is previously paved or not, and bringing the excavated materials to the yard to be stockpiled. That material is then reused either as fill, base, or aggregate depending on the needs of that or other jobs. A-1's vehicles and equipment are kept at the yard.

Preparing the material for use involves screening the materials to segregate soils, stone and broken asphalt. The broken asphalt and the larger stones are crushed so that they can be used as base material. A-1 has been crushing stone and asphalt at its yard since the early 1990's.

The company does not provide its own hot asphalt, and it does not store hot asphalt at the yard. The hot asphalt is purchased from batch asphalt companies in Acushnet and Rochester.

Since 2011 A-1 has been a subcontractor on projects involving the demolition and reconstruction of various public works, including the Purchase Street railroad bridge, several projects at the New Bedford Airport, and the Faunce Corner Road reconstruction. Those projects have involved removing, transporting, screening, crushing and redelivering materials to those and other project sites for use as loam, fill or aggregate.

All of these activities are within the scope of the allowed uses in the Industrial B zone for the following reasons:

A contractor's yard is expressly permitted as a use in the Industrial B zone. See Chapter 9, Comprehensive Zoning, 2210 and Appendix A at D. Industrial, 13. contractor's yard.

There has been no change of the principal use of the property as a contractor's yard since 1963.

The May 18, 2016 cease and desist order from the Commissioner of Buildings, Danny Romanowicz, states that the specific violation with regard to use of the property as a contractor's yard is that "you have failed to obtain a building permit for any structures associated with, or the operation of, A-1 Asphalt" and "you have failed to obtain the required permit for a contractor's yard".

A-1 Asphalt operated out of a garage which was built pursuant to a building permit obtained in 1932. When A-1 Asphalt began using the property as a contractor's yard in 1963 there was no State Building Code. The State Building Code didn't come into effect until 1975. The provisions of the zoning ordinance at Sec. 5110 regarding the change in use of a building, and the "issuance of a Building Permit or Certificate of Use and Occupancy where required under the Commonwealth's State Building Code" cannot apply to a prior existing, conforming use.

The Building Department has issued permits related to A-1 Asphalt's use of the property as a contractor's yard in 1973 (installation of gas pumps), 1999 (electrical work for diesel fuel pumps), and 2000 (replacement of defective electrical cable) with no apparent complaint about the use of the property.

The May 18, 2016 cease and desist letter also states that "the rock and concrete crushing operations and the crushing and recycling of other materials are not permitted activities in a contractor's yard as defined in the Code of Ordinances".

The present zoning ordinance took effect in 2002. A-1 has been engaged in crushing stone and concrete in its yard since the 1990's.

At that time the applicable zoning ordinance provided that:

"Within any Industrial "B" District, as indicated on the building zone map, any use otherwise lawful shall be permitted except a building or structure intended or designed to be used in whole or in part for residential purposes or for use as a fish fillet plant or fish processing plant". Sec. 9-253 Uses.

There is nothing that suggests that crushing stone or concrete is not otherwise lawful. So it was, until 2002, an allowed use in the Industrial "B" zone. As such that use is a prior existing non-conforming use, and the provisions of the 2002 zoning code do not apply to that use.

For the reasons stated above A1's use of the property is permitted under the zoning ordinance and under state law. The Commissioner of Buildings Cease and desist order should be overturned.





*City of New Bedford*  
**REQUEST for a CERTIFIED ABUTTERS LIST**

This information is needed so that an official abutters list as required by MA General Law may be created and used in notifying abutters. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

SUBJECT PROPERTY			
MAP #	124	LOT(S)#	27
ADDRESS: 1861 Shawmut Ave.			
OWNER INFORMATION			
NAME: Anthony R. DeCosta			
MAILING ADDRESS: 1861 Shawmut Ave. New Bedford, MA 02740			
APPLICANT/CONTACT PERSON INFORMATION			
NAME (IF DIFFERENT): Thomas P. Crotty, Esq.			
MAILING ADDRESS (IF DIFFERENT): 388 County Street, Third Floor, New Bedford, MA 02740			
TELEPHONE #	508-990-9101		
EMAIL ADDRESS:	tomcrotty@tcrottylaw.com		
REASON FOR THIS REQUEST: <i>Check appropriate</i>			
<input checked="" type="checkbox"/>	ZONING BOARD OF APPEALS APPLICATION		
<input type="checkbox"/>	PLANNING BOARD APPLICATION		
<input type="checkbox"/>	CONSERVATION COMMISSION APPLICATION		
<input type="checkbox"/>	LICENSING BOARD APPLICATION		
<input type="checkbox"/>	OTHER ( <i>Please explain</i> ):		

PLANNING DEPARTMENT  
 MAY 05 2016  
 CITY OF NEW BEDFORD

Once obtained, the Certified List of Abutters must be attached to this Certification Letter.

This sheet is NOT part of your ZBA application but you will need to submit this form to the Planning Division Room 303 in City Hall, 133 William Street. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

**Official Use Only:**

As Administrative Assistant to the City of New Bedford's Board of Assessors, I do hereby certify that the names and addresses as identified on the attached "abutters list" are duly recorded and appear on the most recent tax.

Carlos Amado

*Carlos Amado*

5/21/2016

Printed Name

Signature

Date

May 6, 2016  
Dear Applicant,

Please find below the List of Abutters within 300 feet of the property known as 1861 Shawmut Ave (124-27). The current ownership listed herein must be checked and verified by the City of New Bedford Assessor's Office. Following said verification, the list shall be considered a Certified List of Abutters.

Please note that multiple listed properties with identical owner name and mailing address shall be considered duplicates, and shall require only 1 mailing. Additionally, City of New Bedford-Owned properties shall not require mailed notice.

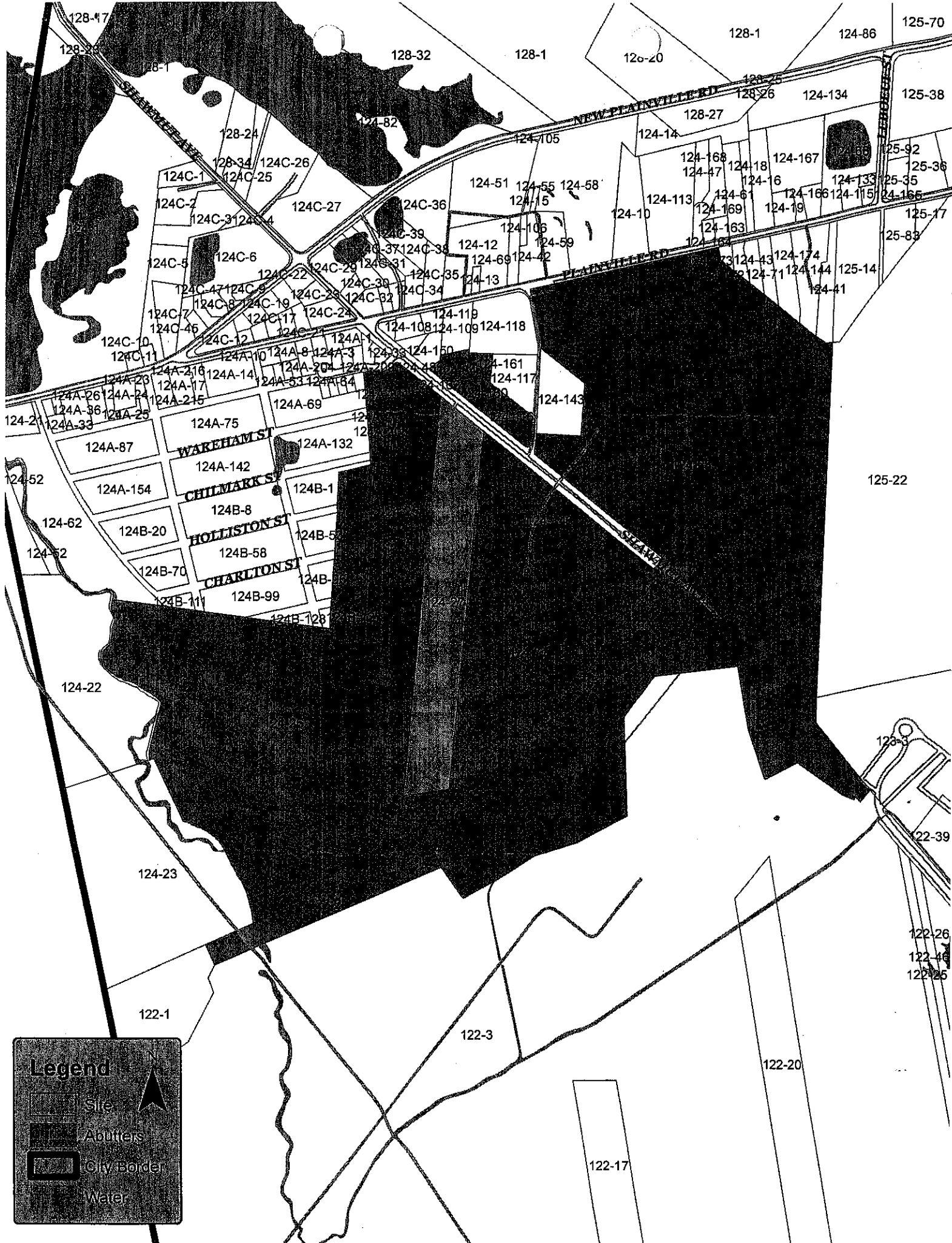
Parcel	Location	Owner and Mailing Address
124-160	1856 SHAWMUT AVE -1858	LUCAS JARED R, 1856 SHAWMUT AVENUE DARTMOUTH, MA 02747
124-161	1860 SHAWMUT AVE	AZEVEDO COLLEEN M, AZEVEDO JESSICA L 1860 SHAWMUT AVENUE DARTMOUTH, MA 02747
124-162 <i>NS</i>	SHAWMUT AVE	BUTLER JAMES E JR, P O BOX 344 POCONO PINES, PA 18350
122-2	NO OF F R R R	COUNTY OF BRISTOL, CONSERVATION NEW BEDFORD, MA 02740
124-146 <i>SS</i>	SHAWMUT AVE	DUPHILY RAYMOND G "TRS", A & R REALTY TRUST 34 FLAGSWAMP ROAD NO. DARTMOUTH, MA 02747
124-77 <i>WS</i>	SHAWMUT AVE	CITY OF NEW BEDFORD, AIRPORT COMMISSION 133 WILLIAM ST NEW BEDFORD, MA 02740
124-27	1861 SHAWMUT AVE	DECOSTA ANTHONY R, 1861 SHAWMUT AVE NEW BEDFORD, MA 02747
124-26 <i>WS-12</i>	SHAWMUT AVE	COUNTY OF BRISTOL, CONSERVATION NEW BEDFORD, MA 02740
124-25	1871 SHAWMUT AVE	WEST MICHAEL, WEST MARY ANN 543 STATE ROAD DARTMOUTH, MA 02747-1803
124A-208	94 FALMOUTH ST	LERIAS JOSE M, LERRIAS MARIA V 94 FALMOUTH STREET DARTMOUTH, MA 02747
124-116 <i>ES</i>	<del>1852 SHAWMUT AVE</del>	<del>BRIDGE WATER STATE COLLEGE, (DCAM) City of New Bedford 131 SUMMER STREET William St BRIDGEWATER, MA 02325 New Bedford MA 02740</del>
124-28 <i>SS</i>	OLD PLAINVILLE RD	CITY OF NEW BEDFORD, AIRPORT COMMISSION 131 WILLIAM ST NEW BEDFORD, MA 02740
124A-211	108 FALMOUTH ST	BENTO CLAUDIO M, BENTO LILIANA C 108 FALMOUTH STREET NEW BEDFORD, MA 02745

May 6, 2016  
Dear Applicant,





Please find below the List of Abutters within 300 feet of the property known as 1861 Shawmut Ave (124-27). The current ownership listed herein must be checked and verified by the City of New Bedford Assessor's Office. Following said verification, the list shall be considered a Certified List of Abutters.

Please note that multiple listed properties with identical owner name and mailing address shall be considered duplicates, and shall require only 1 mailing. Additionally, City of New Bedford-Owned properties shall not require mailed notice.

<u>Parcel</u>	<u>Location</u>	<u>Owner and Mailing Address</u>
124A-210	114 FALMOUTH ST	COSTA CARLOS M, 114 FALMOUTH STREET NEW BEDFORD, MA 02745
124A-212	102 FALMOUTH ST	DOUGHERTY THOMAS, MARQUES ANNABELLA 102 FALMOUTH STREET NEW BEDFORD, MA 02740
124-48	1878 SHAWMUT AVE	WELCH THOMAS J, WELCH ANDREA M 1878 SHAWMUT AVENUE NEW BEDFORD, MA 02745
124-34	1868 SHAWMUT AVE	ROY ANDREW, 1868 SHAWMUT AVENUE DARTMOUTH, MA 02747



**Legend**

-  Site
-  Abutters
-  City Border
-  Water



122-1

122-3

122-17

122-20

122-26  
122-46  
122-25

122-39

125-22

124-22

124-2

124-52

124-52

124-52

124-62

124-62

124-62

124-62

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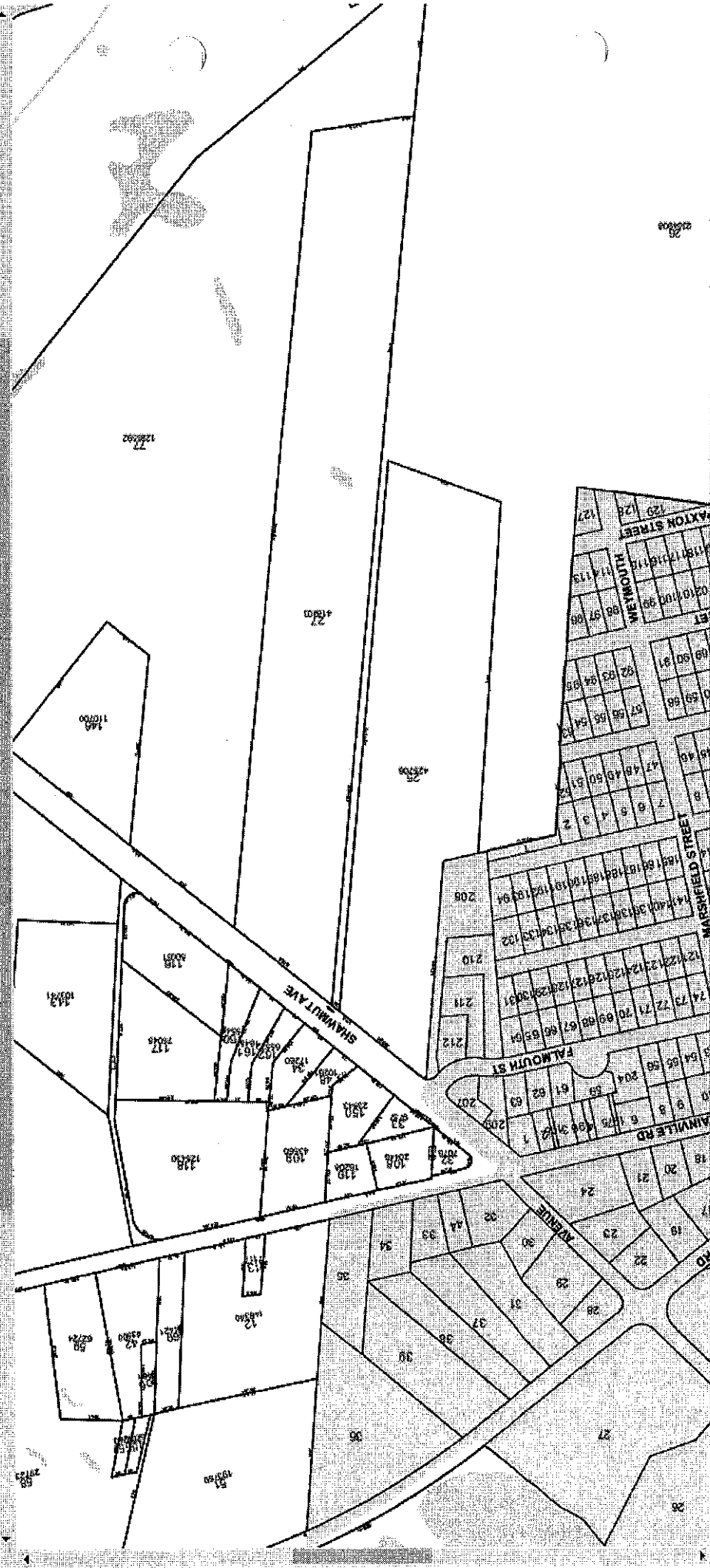
124-62

124-62

124-62

Start

10:16 AM 5/5/2016



**FIDUCIARY DEED**

I, Thomas P. Crotty, of New Bedford, Bristol County, Massachusetts, Guardian of Charles DeCosta, Jr., also known as Charles DeCosta, by power conferred by License To Sell, dated December 6, 2001 and issued by Bristol County Probate and Family Court Docket Number 87P1091-GI3 and every of power;

for Thirty-Seven Thousand (\$37,000.00) Dollars paid,

grant to Anthony R. DeCosta of 1984 Shawmut Avenue, New Bedford, Bristol County, Massachusetts.

the land in New Bedford, Bristol County, Massachusetts with any buildings thereon, bounded and described as follows:

BEGINNING at the northerly corner of the premises to be conveyed at a point in the southwesterly line of Shawmut Avenue;

thence SOUTHERLY by a laneway and land formerly of James R. Rainville about twenty-two hundred seventy-seven and 87/100 (2,277.87) feet to land conveyed to Carlo Bianchi & Co. by deed recorded in Bristol County (S.D.) Registry of Deeds Book 873, Page 385;

thence SOUTH 86° east by said land of Carlo Bianchi & Co. about two hundred sixty-three and 8/10 (263.8) feet;

thence NORTH 15° 20' East by said Carlo Bianchi & Co. land about two thousand twenty-six and 3/100 (2,026.03) feet to said Shawmut Avenue;

and thence NORTHWESTERLY by said Shawmut Avenue about three hundred sixteen and 8/10 (316.8) feet to the point of beginning.

Containing nine (9) acres and ninety-eight and 67/100 (98.67) square rods, more or less.

FOR TITLE see the Estate of Charles DeCosta, Bristol County Probate and Family Court Docket Number 90P0261-A1. See also deed of Peter Francis DeCosta to Charles DeCosta dated June 8, 1970 and recorded with Bristol County S.D. Registry of Deeds in Book 2093, Page 288.

ADDRESS OF PREMISES: 1861 Shawmut Avenue, New Bedford, MA.

WITNESS my hand and seal this 29<sup>th</sup> day of JULY, 2002.

Marc R. Deshaies  
witness

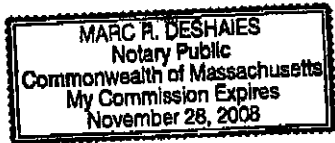
Thomas P. Crotty  
Thomas P. Crotty, Guardian

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

JULY 29, 2002

Then personally appeared the above-named Thomas P. Crotty and acknowledged the foregoing instrument to be her free act and deed before me



Marc R. Deshaies  
Notary Public  
My Commission Expires: 11/28/2008

REG. OF DEEDS  
REG #07  
BRISTOL S

08/26/02 2:49PM 01  
000000 48905

FEE \$168.72

CASH \$168.72

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

PROBATE COURT

87P1091-G13

At a Probate Court held at Taunton in and for said County of Bristol, on the sixth day of December in the year of our Lord ~~one thousand nine hundred~~ two thousand one

ON the petition of Thomas P. Crotty guardian of Charles DeCosta Jr. of New Bedford in said County of Bristol

~~mentally ill person~~ single, praying for leave to sell the following described real estate of his ward - ~~at public auction~~ at private sale, for the sum of Thirty Seven Thousand Dollars in accordance with the offer named in said petition, or upon such terms as may be adjudged best, or at public auction, if he shall think best so to do, - an undivided one quarter interest in certain real estate

the land in said New Bedford, with the buildings thereon, bounded and described and follows:

- BEGINNING at the northerly corner of the premises to be conveyed at a point in the southwesterly line of Shawmut Avenue;
Thence, SOUTHERLY by a laneway and land formerly of James R. Rainville about twenty-two hundred seventy-seven and 87/100 (2277.87) feet to land conveyed to Carlo Bianchi & Co. by deed recorded in Bristol County (S.D.) Registry of Deeds, Book 873, Page 385;
Thence, SOUTH 86° east by said land of Carlo Bianchi & Co. land about two hundred sixty-three and 8/10 (263.8) feet;
Thence, NORTH 15° 20' East by said Carlo Bianchi & Co. land about two thousand twenty-six and 3/100 (2026.03) feet to said Shawmut Avenue; and
Thence, NORTHWESTERLY by said Shawmut Avenue about three hundred sixteen and 8/10 (316.8) feet to the point of beginning.
Containing nine (9) acres and ninety-eight and 67/100 (98.67) square rods, more or less.



Notice to the ward having been waived by the court, and all persons interested having assented and the Guardian Ad Litem having reported and assented

~~All persons interested, having received a copy of this notice, and no person objecting thereto.~~

It appearing that - said offer is an advantageous one, and that the interest of all parties concerned will be best promoted by the acceptance of said offer - and that it is necessary that said ward's interest shall be sold for his maintenance\_\_\_\_\_

IT IS DECREED that the petitioner be authorized to sell and convey - ~~at public auction~~ at private sale in accordance with said offer or for a larger sum, or at public auction, if he shall think best so to do, the real estate of said ward described in said petition, for the purposes aforesaid, ~~and it is further decreed that said petitioner may become the purchaser of said real estate.~~

And if, notwithstanding, said petitioner deems it best to sell said real estate at public auction said petitioner is required to give public notice of the time and place of such sale at auction, by publishing a notification thereof once in each week, for three successive weeks, in the Standard Times a newspaper published in said New Bedford and, within one year after such sale return his affidavit of having given notice with a copy thereof, to the Probate Court.

*Quodam M. J. O.*  
\_\_\_\_\_  
Judge of Probate Court

A True Copy  
Attest

*Robert J. [unclear]*

T  
13/6