

1. 7:00 P.M. Committee On Ordinance & Rules

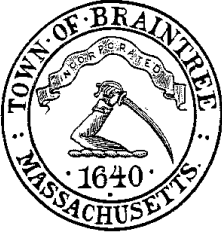
Documents:

[18 JUNE 5 ORDINANCE AND RULES AGENDA.PDF](#)

1.1. 7:00 PM Committee On Ordinance & Rules Documents

Documents:

[18 JUNE 5 OR MEETING.PDF](#)



# **Braintree Town Council Committee on Ordinance & Rules**

One JFK Memorial Drive  
Braintree, Massachusetts 02184

## **MEMBERS**

Sean Powers, Chairman  
David Ringius, Vice-Chairman  
Charles Kokoros, Member  
Timothy Carey, Member

## **AGENDA**

**JUNE 5, 2018**

**Starting Time – 7:00 p.m.**

**Cahill Auditorium, Town Hall**

**Pledge of Allegiance**

**Moment of Silence**

**Roll Call**

**Approval of Minutes**

- May 9, 2018

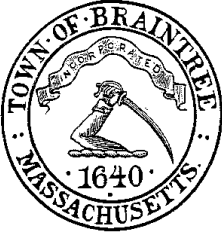
**New Business**

- None

**Old Business**

- 17 067 REZONE: Thayer Sports Center, LLC or take up any action relative thereto

**Adjournment**



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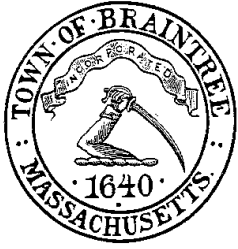
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David Ringius, Jr, Vice- Chairman  
Charles Kokoros, Member  
Timothy Carey, Member  
Charles B. Ryan, Ex-officio

## May 9, 2018 MINUTES

A meeting of the Committee on Ordinance & Rules was held in the Johnson Chambers on Wednesday, May 9, 2018 beginning at 5:00pm.

Chairman Powers was in the Chair.

Clerk of the Council, Susan Cimino conducted the roll call.

Present: Sean Powers, Chairman  
Charles Kokoros, Member  
Timothy Carey, Member

Not Present: David Ringius, Jr, Vice- Chairman

Also Present: Joseph Reynolds, Chief of Staff  
Ed Spellman, Finance Director  
John Goldrosen, Town Solicitor  
James Arsenault, DPW Director  
Christine Stickney, Director Planning and Community Development  
Elizabeth Mees, Historical Commission  
Ronald Frazier, Historical Commission  
Kate Nedelman Herbst, Historical Commission

There was a moment of silence for all those serving in our armed services, past and present, and the meeting was opened with the pledge of allegiance to the flag.

### Approval of Minutes

#### • April 24, 2018

**Motion:** by Councilor Kokoros to approve minutes of April 24, 2018

**Second:** by Councilor Carey

**Vote:** For (3 - Powers, Kokoros, Carey), Against (0), Absent (1 - Ringius), Abstain (0)

## New Business

- **18 025 Mayor: Demolition Delay Ordinance or take up any action relative thereto**

Joseph Reynolds, Chief of Staff stated the Demolition Delay Ordinance is something the Town has been looking at for a number of years now. The driving force is the Historical Commission.

Christine Stickney, Director Planning and Community Development stated this was prepared for the Historical Commission by the Town Solicitor's office a couple of years ago. It allows for some time to take a look at the structure to determine if it is deemed to be historic in nature and if it is worthy of preservation, photography or to keep components of it. This would be for structures 75 years in age or older. There is a 6 month delay. When the applicant applies for the building permit there is a 6 month delay where they present their plans to the Historical Commission. The Historical Commission will make a decision whether or not it is historically significant to have a Public Hearing to move it forward or if they determine it is not significant they will tell the building inspector it can be raised.

Councilor Kokoros stated 75 years is not that old. Is there any flexibility to increase the age of the buildings beyond 75 to 100 years? A 6 month delay is a pretty significant delay for someone to have to wait. It could put someone in financial hardship.

Christine Stickney, Director Planning and Community Development stated the Historical Commission could get an answer to the applicant within 45 days if they deem a structure to not be of significance historically. The Historical Commission holds meetings every 30 days. They would be able to at least say it is not significant and it could move forward.

Councilor Kokoros stated I know how government works and this could put someone in a tough bind as far as the time period. I would love us to identify all the structures deemed historical in value. I want to be cautious in this restriction in somebody's property rights.

Elizabeth Mees, Historical Commission stated this by-law would not determine what a property owner can and cannot do. It is merely a pause so we can have the time to document properties. We can discuss the 75 years. 75 years would be for structures constructed prior to 1943. Braintree is one of the oldest municipalities within Massachusetts. We have a beautiful stock of 18 century structures. It would be a shame to lose those. As it stands right now anyone can come in with the proper permit filing and can remove those structures. This is meant just to be a pause.

Councilor Kokoros stated I can't support 75 years. I would support 100 years.

Councilor Powers stated he feels 100 years is too long and 50 years is too short a time. He stated 75 years seems like a good balance. He does not want to put any more burdens on homeowners. There are set and definitive timelines with this ordinance so it cannot be dragged on.

Councilor Carey asked about the definition in determining a structure significant.

Elizabeth Mees stated it would be due to its history, use and any certain people connected to a structure.

Councilor Carey asked about Public Hearings and if it would be a substantial impact to the home/property owner.

Christine Stickney stated the advertising cost and notification to abutters is probably a cost the applicant would occur.

Councilor Kokoros stated I certainly would not support putting the burden on notifying abutters on the individual owning the property. What happens if a property owner wants to demolish a home more than 75 years old that is deemed historic?

Christine Stickney stated the historical commission primarily wants to be able to document. They want to have the time to go into and document these structures.

Councilor Kokoros asked what if a person does not want them to come into their property. What do you do then?

Christine Stickney stated I would defer to the Town Solicitor if the Town implements this they are subject to it. I do not know what remedy comes if they don't let you in their home.

Councilor Kokoros stated I think that would violate my rights as the property owner.

Elizabeth Mees stated the documentation would probably be someone from the Historical Commission. We would hopefully take some photos from the public way and work with the property owner. If it was their desire to demolish their building we would work with them. These conversations happen day in and day out. The intent is not to limit the use of the property or gain entry or violate privacy in anyway. It is to achieve a solution we are all comfortable with. It is considered an advantage to the town. It implies we respect our history.

Councilor Kokoros stated I have a problem with 6 months. It is just too long of a period of time.

Christine Stickney stated the longest it could go is 6 months but the shortest would be 30 days. The way it is written right now within 45 days you would be heard and it is determined whether your house is historically significant. Now let's talk about what will be done to document it. If you are not deemed significant you get a quick answer. If you are deemed significant you as the property owner and the historical commission have a discussion about what's going to happen.

Councilor Powers asked how would 120 days be or 4 months to render a decision?

Elizabeth Mees stated we are all volunteers. We meet once a month. When something comes up it is advertised, then we meet and it is brought forth and could possibly be continued so that is really where the time comes in.

Councilor Powers stated Councilor Kokoros states 160 days is too long of a time. As a compromise how would 120 days be sufficient?

Christine Stickney stated that would be more realistic giving us the time to advertise.

Councilor Kokoros stated we also do not have clarification on who would pay for the advertising and to the process. We should be identifying properties age.

Councilor Powers asked is there any liabilities in identifying homes. Is there a way to compile a list of homes 1943 and older.

Kate Nedelman Herbst, Historical Commission stated trying to identify structures of significance could be a potential liability and financial impact trying to identify every building in the town.

Councilor Kokoros stated I would like an estimate on how many properties we are talking about. Just to know how many properties fit into the 75 year old plus category and the 100 year old category.

Joe Reynolds stated perhaps we choose not to take a vote this evening, if the committee agrees and we could step back and discuss points noted.

Councilor Powers stated this would be an effort to table this to a future meeting.

Councilor Carey stated I would like clarification on what is the full responsibility of the property owner.

Councilor Kokoros stated “Motion to Table Order 18 025 to a future meeting”

**Motion:** by Councilor Kokoros to Table Order 18 025 to a future meeting

**Second:** by Councilor Carey

**Vote:** For (3 - Powers, Kokoros, Carey), Against (0), Absent (1 - Ringius), Abstain (0)

- **18 026 Mayor: FY2019 Operating Budget or take up any action relative thereto (Storm Water Ordinance)**

James Arsenault, DPW Director stated the federal mandates separation with drainage with sewerage and the next phase of the EPA requirements is now looking at the drainage system. This is to make sure the drainage is functioning properly and there is no impairment to streams and rivers. This is all being driven from EPA requirements. Stormwater is rain or snow that drains to the nearest water system without any treatment and pollutes the natural habitats. The old approach was general maintenance and cleaning and minimal treatment. The new possible water treatments are bio-treatment areas. The new approach improves public health and safety and meets all the requirements of the clean water act 2016 MS4 – Stormwater program. We achieve this new approach by creating and implementing a Stormwater Master Plan. Environmental regulations are changing. There are stricter requirements and fines for not complying with EPA Stormwater Program. In 2016 EPA and MassDEP co-signed the final permit in April 2016 and it will become effective July 1, 2018. To become authorized to discharge stormwater, a Notice of Intent (NOI) must be submitted before September 29, 2018. The list of impaired waters in Braintree include: Cochato River, Monatiquot River, Town Brook and Weymouth Fore River. The proposed Stormwater Utility Fee is for single family and up to 3 family properties year 1 is \$6.25 per quarter or \$25 per year on the Water/Sewer bill. 4 plus family, commercial, industrial & tax exempt pay the same but per ERU (equivalent residential unit) which is multiplied per 2,780 SF of impervious surface on the parcel. We do have some latitude if there is undue hardship. We can look at that and make a decision if that is justified.

Councilor Powers stated this is an example of an unfunded federal mandate that forces us to impose these fees on our residents.

Councilor Kokoros stated I do not like to impose a fee of any kind but because the respect for you and your team and all the expertise and that you all put us in a good position so we do not have to pay any fines with this new mandate. Thank you to all your staff members explaining this thoroughly.

Councilor Kokoros read the following motions for favorable recommendation to the full Council:

**MOTION:** That the Town Council vote to amend Title 3 of the Town's General Ordinances, by adding "Chapter 3.13: Stormwater Enterprise Fee", as filed with the Office of the Town Clerk.

**Motion:** by Councilor Kokoros

**Second:** by Councilor Carey

**Vote:** For (3 - Powers, Kokoros, Carey), Against (0), Absent (1 - Ringius), Abstain (0)

**MOTION:** That the Town Council vote to amend Title 13 of the Town's General Ordinances, by adding "Chapter 13.14: Stormwater Management", as filed with the Office of the Town Clerk.

**Motion:** by Councilor Kokoros

**Second:** by Councilor Carey

**Vote:** For (3 - Powers, Kokoros, Carey), Against (0), Absent (1 - Ringius), Abstain (0)

### **Old Business**

- None

It was unanimously voted to adjourn the meeting at 6:43 p.m.

Respectfully submitted,  
Susan M. Cimino  
Clerk of the Council

## **Documents provided for Meeting**

- 18 025 Mayor: Demolition Delay Ordinance or take up any action relative thereto
- 18 026 Mayor: FY2019 Operating Budget or take up any action relative thereto (Storm Water Ordinance)



**Form of Motion for Town Council Approval of Thayer Academy Rezoning (Order 17-067)  
(Prepared by Assistant Town Solicitor Goldrosen, 4/24/18)**

**MOTION:**

That the Town Council vote, at the request of the property owner, Trustees of Thayer Academy, to amend the Zoning Map of the Town of Braintree, by rezoning from the Residential B District to the Highway Business District that portion of Assessors Parcel 1053 Lot 12H (including the discontinued Washington Street Right of Way) that is not already zoned as Highway Business, and the entirety of Assessors Parcel 1050 Lot 14. The parcels to be rezoned are shown on a plan entitled "Rezoning Petition Plan," prepared by Tetra Tech, dated March 21, 2018 and revised April 23, 2018, and on file with the Town Clerk, as Lot A in its entirety and the portions of Lot B and Lot C that are not indicated on said plan as currently within the Highway Business District. The acreage to be rezoned includes: all of Lot A, approximately 0.45 acres; within Lot B, approximately 0.7 acres of the total of 0.94 acres; and within Lot C, approximately 6.5 acres of the total of 11.98 acres. The affected parcels are currently, and will remain, within the Watershed Overlay Protection District. The rezoning request has been recommended favorably by the Planning Board, as detailed in its report to the Town Council, dated November 20, 2017.

WRITTEN NARRATIVE

Introduction

Council Order #17-067, a petition submitted by the Trustees of Thayer Academy, a Massachusetts non-profit corporation (“Thayer”) to change the zoning classification for portions of the property known as the Thayer Academy South Athletic Campus Fields from Residence B District (“Res. B”) to Highway Business District (“HBD”).

The properties subject to the rezone petition are shown on the following plans and map to clarify the land areas subject to the rezone as follows:

- Plan entitled, “Rezoning Petition Plan”, Thayer Academy South Athletic Campus Fields, dated 3-21-18, prepared by Tetra Tech, Sheet 1 (Exhibit Plan 1);
- “Proposed Conditions”, Thayer Academy South Athletic Campus Fields, dated 3-21-18, prepared by Tetra Tech, Sheet 2 (Exhibit Plan 2);
- “Context Plan”, Thayer Academy South Athletic Campus Fields, dated 3-21-18, prepared by Tetra Tech, Sheet 3 (Exhibit Plan 3); and
- Enlarged section of Zoning Map of Town of Braintree dated December 10, 1986, as most recently revised July 2001 (Exhibit 4).

Plans and map portions are collectively referred to as “Exhibit Plans”.

**I. EXISTING ZONING CLASSIFICATION**

Property owned by Thayer comprises 13.74 acres and is shown on Assessors Map 1053 Plot 12H and Map 1050 Plot 14 and on Exhibit Plan 1, the “Rezoning Petition Plan”; that shows Lot A, Lot B and Lot C that are subject to the requested change in zoning classification for portions of Lot B and Lot C and all of Lot A from Res. B to HBD as follows:

a. Lot A

Lot A is zoned Res. B and contains approximately .45 acres of land. The property was conveyed to the Trustees of Thayer Academy as authorized by a Special Act of the Legislature being Chapter 68 of the Acts of 2004. The premises was conveyed by the Commonwealth of Massachusetts Division of Capital Asset Management and Maintenance (“DCAM”) to Thayer on

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BRAINTREE, MA  
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September 7, 2005. Lot A had been taken by the Commonwealth for roadway layout of Washington Street and the bridge abatements in 1946. Premise was conveyed subject to perpetual right of access and easement for maintenance, reconstruction and repair of the bridge over the MBTA tracks. The premises required the land conveyed “**are to be used for recreational purposes**” (copy of Chapter 68 Acts of 2004 and Release Deed are attached as Exhibit 5).

b. Lot B

Lot B is the discontinued portion of Old Washington Street as shown on Exhibit Plan 1. Lot B was conveyed to Thayer by deed of the Town of Braintree dated April 16, 2004. The conveyance was authorized by Article 16 of the 2003 STM dated October 7, 2003. The property contains .94 acres of which .7 acres is presumed zoned Res. B. Reference to the Enlarged Section of the Town of Braintree Zoning Map (attached hereto as Exhibit 4) shows a triangular shaped protrusion zoned HBD. Exhibit Plan 1 shows the triangular protrusion running to the centerline of Old Washington Street discontinued in 1946. By operation of law, ownership to the centerline of a discontinued way rests in the abutter based upon the length of the common lot line. Lot B is a “split lot” zoned Res. B/HBD or is “unzoned”. The entire Lot B contains .94 acres; the Res. B zoned portion contains approximately .7 acres and the HBD portion contains approximately .24 acres.

Copy of the Article 16 of the 2003 STM and deed from the Board of Selectman is attached as Exhibit 6).

c. Lot C

Lot C contains 11.98 acres of land and comprises a large portion of Assessor’s Map 1053 Plot 12H as shown on Exhibit Plan 1. The premises is zoned both HBD and Res. B. The Res. B portion of Lot C contains approximately 6.5 acres and is used for recreational playing fields and a large storm water detention facility. Lot C and Lot D were conveyed to Thayer by Thomas J. Flatley individually and John J. Flatley and Greg D. Stoye, Trustees, deeds were registered in the Norfolk Registry District of the Land Court on December of 2004. Easements for drainage and storm water detention facilities were filed as well. (Copy of the deeds are attached hereto as Exhibit 7).

## **II. WHY IS THE REZONE SOUGHT**

The approximately 13.74 acre site is comprised of four (4) lots for illustration that are zoned both HBD and Res. B. All of the Thayer South Athletic Campus Fields lie with the Water Protection Overlay District (§135-609 BZO). The land area within the HBD is predominantly impervious surface – with ledge and hard scape surfaces. Section 135-609 E. Special Permit Use requires a minimum of 30% open space (pervious surfaces) that do not exist in the current HBD land area.

Exhibit Plan 2, Proposed Conditions Plan shows the proposed commercial recreation structure with accessory parking and exterior tennis courts. The Proposed Condition Plan also shows the site's wetlands and stormwater detention ponds and facilities. The plan shows the existing off-street parking facilities and parking circulation that connects and provides access to the entire site including the existing play fields.

Rezoning the entire site HBD, the proposed Thayer South Athletic Campus will meet the dimensional and density requirements for access, open space and off-street parking. A unified HBD zone removes the need for special permits to cross one zone to serve another zone and landscape buffer 100 foot set back in the transitional area between HBD and residential districts (§135-702).

The Flatley deeds and easements require Thayer to maintain the existing storm water detention and underground facilities that service the entire 13.74 acre site. These are registered easements that run with the land.

Due to the wetlands/stormwater detention system and use restrictions on the Lot A and B that the land area must be used for recreation use; there is no potential to develop the property for business use other than the proposed commercial recreation use.

## **III PUBLIC BENEFITS TO THE GENERAL AREA AND THE COMMUNITY**

1. Rezoning does not alter the current use of the site for recreation purposes and its playing fields will be available as well as the field house for the residents of the area and community in general;

2. Master Plan for the town adopted in 1998, provides in part, to “favor development strategies that produce secondary benefits to the town in addition to enhance tax base...” The rezone and proposed use as shown on Exhibit Plan 2 enables private development and operation of the facility on Thayer’s property. The educational use exemption pursuant to G.L. c. 40A §3 is not available and the field house and accessory parking will be taxable by the Town of Braintree. In addition to the financial benefits to the town the development of an indoor recreational facility, improvements to the turf playing fields and construction of tennis courts as proposed is a further recreation enhancement to the benefit of the general area and the community in general.

The rezone allows complete conformity with the towns with current dimensional and use requirements of the zoning ordinances; allow for functional improvements that enhances recreational opportunities of the Thayer Athletic Campus; provides adequate open space and improves storm water management facilities that serve the entire property and adjacent properties; and enables adequate off-street parking facilities with appropriate traffic circulation. These benefits are in addition to the tax benefits derived from a new well-designed recreation use building that is available for use year round.

**FIELD AND FACILITY USAGE LICENSE AGREEMENT  
BETWEEN THAYER ACADEMY AND THE TOWN OF BRAINTREE**

This Agreement is made this 3<sup>rd</sup> day of April, 2018, by and between the Trustees of Thayer Academy, having an address at Thayer Academy, 745 Washington Street, Braintree MA 02184 ("Thayer") and the Town of Braintree, Massachusetts acting by and through its Mayor, having an address at One J.F.K. Memorial Drive, Braintree, MA 02184 (the "Town").

**Whereas**, Thayer is the owner of four artificial turf athletic fields (individually, a "Field"), parking lot and accompanying equipment and facilities (the "Field Appurtenances") located at 1535 Washington Street, Braintree, Massachusetts (the Fields and Field Appurtenances are sometimes collectively referred to herein as the "Thayer Academy South Campus" or SAC") and two artificial turf fields on Thayer's main campus at 745 Washington Street ("Main Campus Fields"); and

**Whereas**, Thayer has entered into a Ground Lease with Sports Center LLC for most of the land occupied by Fields 2, 3 and 4 at the SAC, for the purpose of converting those particular fields to a multi-purpose indoor athletic facility and parking; and

**Whereas**, the Town desires, on a limited periodic basis, as more fully set forth herein, to use the SAC and Main Campus Fields when Thayer does not need to use them or otherwise restricts use; and

**Whereas**, Thayer is willing to allow the Town limited periodic usage of Field 1 at the SAC and the Main Campus Fields for a specified period of time, all as more particularly set forth herein.

**Now therefore**, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Term of Agreement**: The Term of this Agreement shall run from March 1, 2018 through December 31, 2021, unless either party gives 30 days notice to the other of its intention to discontinue and terminate this Agreement, in which case this Agreement shall terminate and be of no further force and effect at the expiration of such 30-day notice period.
2. **Rights to Use SAC and Main Campus Fields**: Expressly subject to the Town's compliance with all terms, conditions and provisions contained herein, the Town shall be permitted to use the SAC Field #1 and one or both of the Main Campus Fields (collectively, the "Fields"), during the times and dates set forth on Exhibit A attached hereto (the "Town Usage Periods") and incorporated by reference, for the purpose of scheduling the use of the the Fields for authorized users defined in paragraph 3 below. The Town affirms that the Town, as a municipal corporation, does not financially sponsor or operate any youth athletic league subject to this agreement and that the Town acts solely as a scheduling agent for the purpose of coordinating access to and use of the Fields by the authorized users. It is understood by the parties that the Town will have use of the Fields during the Town Usage Periods at those specific time slots and for those specific Fields as predetermined by Thayer, and thus sufficient advance notice by Thayer to the Town is necessary so that the Town may plan its schedule and field usage within the Town Usage Period. Within those designated time periods in which the Fields may be used by the Town, the Town agrees to provide specific advance notice to

Thayer so that Thayer will have sufficient advance notice to make use of the Fields that the Town is not using during such time periods. Accordingly, the notice provisions set forth on Exhibit A attached hereto are an integral part of this Agreement. Notwithstanding the foregoing, the Town acknowledges and agrees that Thayer shall have complete control and use of the Fields and is licensing to the Town such usage of the Fields or portion of the Fields during the Town Usage Period so long as the same does not interfere or conflict with Thayer's usage thereof. In the event circumstances dictate that Thayer restricts or prevents usage of the Fields or portion thereof by the Town during any Town Usage Period, Thayer shall notify the Town by the most expedient means available (it being understood that if time permits a writing sent by letter, e-mail or facsimile transmission is preferred) and thereafter the Town shall make only such use of the Fields, or make no use of the Fields, as the case may be, in accordance with the instructions set forth by Thayer in its notification to the Town.

3. **Authorized Users of Fields:** Pursuant to this Agreement, the Town may authorize only the following persons or teams to use the Fields during the Town Usage Period:

a. Youth athletic teams in organized leagues run by or facilitated by the Town or by a separate youth organization to which the Town allows its own Town fields to be used so long as each and every member of each team is a youth and a Town resident.

b. Youth athletic teams in organized leagues run by or facilitated by the Town or by a separate youth organization by which the Town allows its own Town fields to be used so long as each and every member of one of such teams is a youth and a Town resident and each and every member of the opposing or other team is a youth and a resident of a town other than the town of Braintree.

For purposes of this Agreement, a "Youth" shall be an individual 18 (eighteen) years of age or younger.

4. **Supervision, Care and Maintenance of Fields:** In no event shall the Town or its authorized users make any use of the Fields without assuring that at all times before, during and after such usage, there exists at the Fields and the SAC appropriate adult supervision and security by person(s) to whom the Town has specifically entrusted the responsibility to act in such capacities (the "Town Representative(s)"). Such Town Representative(s) shall be persons with suitable experience and/or knowledge to perform his or her duties required in such capacity including without limitation the duties described herein. The Town Representative(s) shall be responsible to (a) unlock and lock the SAC or Fields being used, as the case may be, (b) maintain and ensure appropriate usage and decorum at the Fields including without limitation the parking areas and on the Fields, (c) instruct all users and visitors to place all trash and debris in proper trash receptacles and to clean up any and all trash and debris remaining on the Fields or in the SAC after the completion of use by the Town of any Town Usage Period and (d) not permit or cause any damages or litter, or otherwise allow the defacing or abuse of any of the Fields or SAC or the property of direct abutters to the Fields or the SAC by any persons using or visiting the SAC or Fields including without limitation any parking areas, facilities or Fields.

5. **LICENSE FEES:** The Town shall not pay any license or user fees or other payments to Thayer hereunder for the use of the Fields (it being understood that the foregoing does not limit or affect any liability which the Town may have hereunder resulting from the Town's noncompliance with the terms and provisions hereof).

6. **LIABILITY AND INDEMNIFICATION OF TOWN:** The Town hereby indemnifies and holds harmless Thayer, through and subject to the coverage limits provided by the Town's general liability insurance policy as stated in paragraph 7 below, from all costs, expenses, fees, losses, litigation costs.

damages and liabilities incurred by Thayer, including reasonable attorney's fees, arising out of or connected with the Town's usage or facilitating of usage of the SAC or the Fields or portion thereof. Notwithstanding the foregoing and to the extent permitted by law, the Town's indemnification under the foregoing provision shall be limited to those claims and amounts which could or would have been paid under the Town's insurance liability policy set forth in Paragraph 7 below. The Town acknowledges, agrees and understands that Thayer is not a partner or co-venturer with the Town under this Agreement or otherwise in connection with the Town's usage of the Fields, but merely is licensing their use to the Town pursuant hereto. It shall be the Town's obligations or responsibilities, and not the obligations or responsibilities of Thayer, to comply with all applicable statutes, rules, ordinances and by-laws of governmental agencies and/or the policies and procedures of insurance companies providing insurance to the Town.

7. **Certificate Of Insurance:** The Town shall provide to Thayer within thirty (30) days of the date hereof, but in any event prior to any usage of the Fields, and at least once annually thereafter, a certificate of comprehensive general liability insurance in the amount of \$1 million per occurrence/\$3 million in the aggregate, with umbrella coverage in the amount of \$2 million with an insurance company, acceptable to Thayer, with Thayer named as an additional insured party insuring without limitation against loss, accident, damage to any person or property arising from the Town using the SAC or any one or part of any Field. In addition to the foregoing, and not by way of substitution, if any youth league or other organization has general liability insurance, the Town shall cause such youth league or organization to provide Thayer, before such youth league or organization makes any use of the SAC or any Field a certificate of said insurance naming Thayer and the Town as additional insured parties. All such certificates shall provide that such insurance shall not be cancelled or modified without providing Thayer and the Town at least thirty (30) days notice.

8. **RULES AND REGULATIONS:** The Town agrees to abide and to cause any and all persons to whom the Town authorizes to use the Fields to abide, to all rules and regulations promulgated by Thayer regarding the use or operation of the Fields. Thayer shall provide the Town with a copy of any written rules and regulations, for distribution by the Town to the authorized users. Specifically, whether or not any rule or regulation is ever promulgated by Thayer, the Town hereby agrees that no person shall be permitted to smoke any tobacco product or otherwise use any medium such as matches or lighters which can create a spark or fire, or possess any drugs or alcohol, in the SAC or on any of the Fields or parking lot areas. Thayer reserves the right, but is not obligated, to allow smoking in a designated parking area. The Town acknowledges and understands that the Fields are expensive to build and cigarettes, cigars or other lighted items or objects could cause serious damages to such Fields if they came in contact with the same. No selling of any food, merchandise or other items by the Town or the authorized users shall be permitted unless expressly consented to in writing by Thayer and then only to the extent of such consent.

9. **VIOLATIONS OF AGREEMENT:** The Town acknowledges and agrees that this Agreement provides to the Town a revocable license to use the Fields and that Thayer may immediately terminate this Agreement and any use by the Town of the Fields in the event the Town has violated the terms and provisions contained herein.

10. **DESIGNATION OF ATTENDING PERSONS:** For the purpose of overseeing and coordinating scheduling, maintenance and supervision of the Fields pursuant to this Agreement, the Town designates Nelson Chin, Recreation and Community Events Coordinator, as its representative. For all other purposes, the Town designates Lisa Maki, Town Solicitor, as its representative. Should notification be required under this Agreement, the parties to whom notification should first be directed (or to such successor persons as either party notifies to the other) are:

**for THAYER other than field scheduling:**



William Stephenson,  
Business Manager  
745 Washington Street  
Braintree MA 02184  
Phone: 781-380-0503  
Cell Phone: 617-719-2086  
Fax: 781-380-0521  
email: [bstephenson@thayer.org](mailto:bstephenson@thayer.org)

**for the Town other than field scheduling:**

Lisa Maki  
Braintree Town Hall  
One J.F.K. Memorial Drive  
Braintree, MA 02184  
Phone: (781) 794-8153  
Fax: (781) 794-8128  
Cell Phone:  
Email: [lmaki@braintreema.gov](mailto:lmaki@braintreema.gov)

**For the Town for scheduling of field use:**

Nelson Chin, Recreation and Community Events Coordinator  
Town of Braintree Recreation Division  
85 Quincy Avenue  
Braintree MA 02184  
Phone: 781-794-8910  
Cell Phone:  
Fax: 781-356-6803  
email: [nchin@braintreema.gov](mailto:nchin@braintreema.gov)

**for Thayer for scheduling of Field use:**

Rick Foresteire  
Athletic Director  
745 Washington Street  
Braintree MA 02184  
Phone: 781-664-2247  
Cell Phone: 617-448-2111  
Fax: 781-848-1027  
email: [rforesteire@thayer.org](mailto:rforesteire@thayer.org)

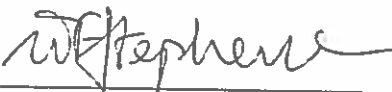
Karen Bosworth  
Business Office Associate  
745 Washington Street  
Braintree MA 02184  
Phone: 781-664-2252  
Cell phone:  
Fax:  
Email: [kbosworth@thayer.org](mailto:kbosworth@thayer.org)

**for Thayer weekend emergencies:**

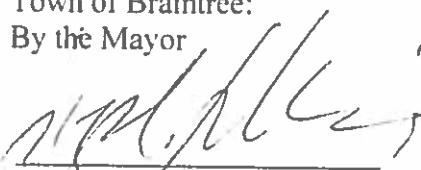
Paul Pantano  
Plant and Facilities Director  
745 Washington Street  
Braintree MA 02184  
Cell Phone: 781-760-0451

**11. ENTIRE AGREEMENT; GOVERNING LAW:** This Agreement represents the entire agreement between the parties hereto. This Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts.

The Trustees of Thayer  
Academy:

By   
Name: William Stephenson  
Title: Business Manager  
Date: 4/3/18

Town of Braintree:  
By the Mayor

  
Joseph C. Sullivan  
Date: 5-10-18

Approved As To Form:

  
Lisa Maki  
Town Solicitor

EXHIBIT A  
TOWN USAGE PERIOD

The Town shall have use of the Fields for fall and spring seasons from March 1, 2018 through December 31, 2021. No less than 60 days prior to the commencement date of a season Thayer shall provide written notice to the Town setting forth the specific times and Fields which are available to the Town (the "Designated Time Allocations") during the applicable Town Usage Period. No less than 14 days prior to the commencement date of the applicable season, the Town shall provide written notice to Thayer which provides the following information for each day and time during the season within the Designated Time Allocations:

Name of actual team using field(s)  
Number of fields required  
Specified time slot necessary for each such team's use

Based on the foregoing, Thayer and the Town will create a matrix showing team, day, time of day and field usage upon which both parties shall rely (the "Town Usage Schedule"). It is understood and agreed that Thayer may use any fields as Thayer so determines when available during the Designated Time Allocations within the season.

The Town Usage Schedule as determined above for each season shall be incorporated into this Exhibit A as if it were a part hereof.

ORDER #: # 1 7 - 0 6 7

**Town of Braintree: Application for Rezoning – Worksheet**

**SECTION TO BE COMPLETED BY PETITIONER**

**Petitioner**

Name: Trustees of Thayer Academy

Address: 745 Washington Street

Phone: 781-843-3580

Email: bstephenson@thayer.org

**Contact/Billing Information**

Name: Bill Stephenson, Business Manager

Address: 745 Washington Street

Phone: 781-664-2519

Email: bstephenson@thayer.org

If same as petitioner, write "same"

\*Petition Submitted By: Melissa Bapt Thayer  
President, Trustee of Thayer Academy (Property Owner)

\* M.G.L. Chapter 40A Section 5/Attorney General's Handbook: Petitioner who can initiate submissions for adoption and or changes to the zoning bylaws include City/Town Council, board of Appeals, Planning board, Property Owner (not a tenant or lessee), 10 registered voters, Regional Planning Agency, Municipal Charter/Enabling Legislation.

Date Received

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BRAintree, MA  
2018 MAR 27 PM 1:30

Date & Time Stamp

**Carl R. Johnson III**

*Attorney at Law*

*45 Braintree Hill Office Park – Suite 200  
Braintree, Massachusetts 02184*

*Telephone: (781) 848-0800*

*Facsimile: (781) 971-5192*

*E-Mail: crjohnson@crj-law.com*

March 26, 2018

Charles B. Ryan, President  
Braintree Town Council  
c/o Office of the Town Council  
Braintree Town Hall  
1 JFK Memorial Drive  
Braintree, MA 02184

RECEIVED TOWN CLERK  
BRAINTREE, MA  
2018 MAR 27 PM 1:29

Re: Council Order #17-067  
Petition to Change Zoning Classification  
Premises: Property Location off Washington Street and  
Braxton Street  
Assessors Reference: Map 1050, Plot 14 and Portions of  
Map 1053 Plot 12H  
Petitioner: Trustees of Thayer Academy

Dear Mr. President:

Please find the supplement to amend Council Order #17-067 to provide a current certified abutters list, to advertise legal notice for the Town Council public hearing and to provide additional text and maps/plans to clarify the premises subject to the rezone petition. This supplement does not alter the previous legal description of the property to be rezoned that was subject to the Planning Board's affirmative recommendation.

Please find the following in support of the request by the Trustees of Thayer Academy as follows:

1. Completed application for Rezoning Worksheet for Council Order #17-067, signed by Melissa Bayer Tearney, President Trustees of Thayer Academy;
2. Three copies of each plan that further identify the land area to be rezoned, as follows:
  - "Rezoning Petition Plan", Thayer Academy South Athletic Campus Fields, dated 3-21-18 prepared by Tetra Tech, being Sheet 1;
  - "Proposed Conditions", Thayer Academy South Athletic Campus Fields, dated 3-21-18 prepared by Tetra Tech, being Sheet 2;
  - "Context Plan", Thayer Academy South Athletic Campus Fields, dated 3-21-18 prepared by Tetra Tech, being Sheet 3; and

- Enlarged section of the Zoning Map of the Town of Braintree dated December 10, 1986, as most recently revised July 2001. (collectively the Exhibit Plans).

These Plans and maps are intended to supplement and further identify area to be rezoned, and are in addition to and do not supplant the Plan submitted by Allen & Major with the petition.

3. Legal description for the property to be rezoned, based upon Lots A, B and C that are subject to the zoning changes.
4. Three written copies of a narrative that identifies the proposed zoning classification change, addressing:
  - a) Existing zone classification;
  - b) Reason for the proposed zoning change; and
  - c) Public benefits to the general area and community.
5. Certified of Abutters with three hundred (300) feet of the property proposed to rezoned in accordance with Article XV Zoning Amendments - §135-1501 Amendments Braintree Zoning Ordinance and G.L. c.40A §5 and 11.
6. Two sets of self addressed envelopes of all abutters, Planning Board's of adjacent communities, Massachusetts Department of Housing and Community Development (SHCD) and Metropolitan Area Planning Council.

We hope that the resubmission of the above will serve to supplement Council Order #17-067 and address any procedural issues, public notice and the time for the Council to act on the rezone petition.

Submitted this 27<sup>th</sup> day of March 2018.



Carl R. Johnson III, Attorney  
for Trustees of Thayer Academy

BRAINTREE TOWN COUNCIL  
PUBLIC HEARING NOTICE

The Braintree Town Council gives notice pursuant to G.L. c.40A, sec. 5 and 11 of a public hearing to be held on **Tuesday, April 24, 2018 at 7:30 p.m.** at the Horace T. Cahill Auditorium, Braintree Town Hall, 1 JFK Memorial Drive, Braintree, Massachusetts. Purpose of the public hearing is to hear and consider **Council Order #17-067** as revised, a request by The Trustees of Thayer Academy to rezone the premises located off Washington and Braxton Streets as follows: being Assessors MAP 1053 Plot 14, shown on the Rezoning Petition Plan (Rezoning Plan) as Lot A containing approximately .45 acres; a portion of Assessor Map 1053 Plot 12H (Plot 12H) shown on the Rezoning Plan as Lot B containing approximately .7 acres of land zoned Residence B; and a portion of Plot 12H shown as Lot C on the Rezoning Plan containing approximately 6.5 acres of Residence B zoned land. The petitioner proposes to rezone the above referenced land from Residence B District to Highway Business District.

The complete text with maps/plans relative to the proposed Rezone Amendment are available for inspection at the office of the Town Clerk at 1 JFK Memorial Drive during normal business hours (M-F 8:30 a.m. – 4:30 p.m.)

Any person interested to give testimony or make comment on the proposed rezone amendment should appear at the time and place noted above.





# Department of Planning and Community Development

Melissa M. SantucciRozzi, Assistant Director  
1 JFK Memorial Drive – Braintree, Massachusetts 02184  
Phone: 781-794-8234 Fax: 781-794-8089

Joseph C. Sullivan  
Mayor

## PLANNING BOARD

Robert Harnais, Chair  
Erin V. Joyce, Vice-Chair  
James Eng, Clerk  
Darryl Mikami, Member  
James N. Downey, Member

**TO:** Council President Sean Powers and Council Members  
**FROM:** Braintree Planning Board  
**DATE:** November 20, 2017  
**RE:** Planning Board Recommendation  
Town Council Order #17-067  
Petition For Rezone – Off of Washington and Braxton Streets  
Map 1050 Plot 14/Portion of Map 1053 Plot 12H and the Discontinued Portion of Washington ROW

The Braintree Planning Board held a public hearing on Tuesday November 14, 2017. The Planning Board heard testimony from Engineer Philip Cordeiro of Allen & Major Associates Inc. and Brian DeVellis, of ESG Associates, Inc., members of the Thayer Academy Board of Trustees and Staff were also present but did not speak. No Members of the Public attended the Hearing.

The petitioner is requesting that certain lands described as Map 1050 Plot 14/Portion of Map 1053 Plot 12H and the Discontinued Portion of Washington ROW, be rezoned from Residence B to Highway Business. Noting that the properties are within the Watershed Overlay Protection District and will remain as such regardless of the underlying Zoning District.

Please refer to the Plan entitled "Parcel Rezoning Exhibit", prepared by Allen and Major Associates, Inc. dated 10-13-17 and revised to 11-07-17 and the updated legal description.

The Planning Board voted on November 14, 2017 to recommend favorable action to the Town Council on the Rezone petition as submitted.

The Planning Board voted as follows:

	<u>In Favor</u>	<u>Opposed</u>
Robert Harnais, Chair	X	
Erin V. Joyce, Vice-Chair	X	
James Eng, Clerk	X	
Darryl Mikami, Member	X	
James N. Downey, Member	X	

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2017 NOV 22 AM 10:46

Department of Planning and Community Development # 17 - 067

1 J.F.K. Memorial Drive

Braintree, Massachusetts 02184

Phone: 781-794-8230 Fax: 781-794-8089



Joseph C. Sullivan  
Mayor

Christine Stickney, Director  
Melissa M. SantucciRozzi, Principal Planner  
Kelly Phelan, Conservation Agent  
Jeremy Rosenberger, Zoning Administrator

**To: Robert Harnais, Chairman and Members of the Planning Board**  
**From: Christine Stickney, Director of Planning and Community Development**  
**Date: November 9, 2017**  
**Re: Proposed Rezone – Thayer Fields off Braxton & Washington Streets**

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2017 NOV 22 AM 10:46

Town Council received a rezone request (Council Order #17-067) from the Trustees of Thayer Academy (property owner) to rezone from Residence B to Highway Business a portion of their property at Braxton/Washington presently used for playing fields. The entire area of both zones is located within the Watershed Protection Overlay District; the overlay is maintained with the proposed rezone.

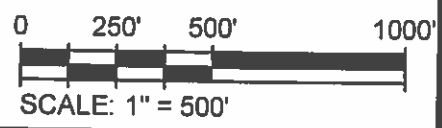
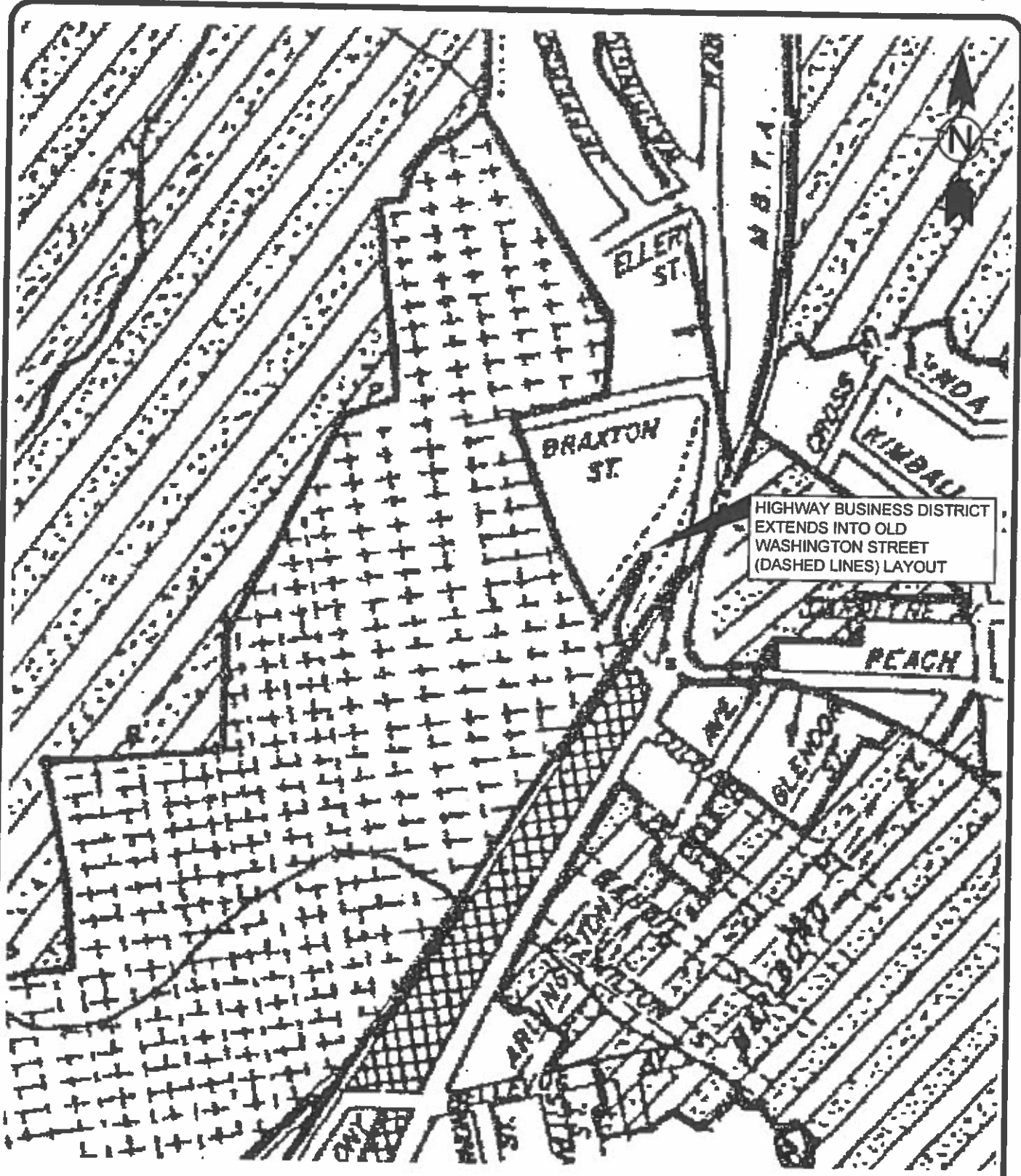
The purpose of the rezone addresses aspects (access and parking) of a forthcoming proposed development for an athletic facility (indoor turf/ice rink) on the westerly end of the existing fields. The proposed access and some of the existing parking are presently zoned Residence B. The proposed athletic facility requires a Special Permit in a Highway Business zone which will be before the Board on December 13, 2017. The proposed development is by a private entity performing the development and operation on the Thayer property, therefore an educational exemption under MGL 40A section 3 is not eligible as to the use. In discussions with staff of the proposed development, rezoning the entire area to highway business would provide consistency with the overall use of the property and adjoining Highway business of Braxton Street.

Presently the property is comprised of two parcels (13.79 acres) with split zoning. The portion of the lot identified as Map 1053 Plot 12H (see plan) along with Map 1050 Plot 14 are the primary area of the rezone. This area is presently utilized as playing field (combo baseball diamond and field) a portion of a second field, parking and driveway aisle. Thayer is presently re-doing the turf field and will be relocating their tennis courts to this location and eliminating portions of the field. Wetlands along the Braxton Street/Washington Street corner preclude further development to the east up against Braxton Street.

Included in the area shown is a portion of the discontinued Washington St. right of way in Plot 12H which presently is not zoned. As part of this rezone, that area of the discontinued portion now becomes Highway Business. In the future the applicant may want to consider merging the two lots into one parcel to simplify the lot lines.

**Staff Recommendation:**

Staff recommends that the Planning Board vote to provide a favorable recommendation to the Town Council of the proposed rezone.



3/21/2018 2:40:10 PM - P:\26698\143-26698-17002\CAD\SHEETFILES\A ZONING MAP FIGURE.DWG - PAPPAS, JUD

**TETRA TECH**  
 www.tetrattech.com  
 100 Nickerson Road  
 Marlborough, MA 01752  
 PHONE: (508) 786-2200 FAX: (508) 786-2201

Thayer Academy  
 Thayer Academy  
 South Athletic Campus Fields  
 Enlarged Section of Zoning Map, December 10, 1986  
 Revised July 2001, Town of Braintree

Project No.: 143-26698.17002  
 Date: 3-21-2018  
 Designed By:  
 Figure  
**A**

LOT A

Beginning at the northeasterly corner of the lot at Washington Street;  
thence bearing S 50-20-35 E a distance of 91.42 feet ;  
thence along a curve to the RIGHT, having a radius of 3348.20 feet, a distance of 304.98 feet ;  
thence bearing S 46-06-13 W a distance of 6.33 feet ;  
thence along a curve to the RIGHT, having a radius of 44.00 feet, a distance of 55.84 feet ;  
thence bearing N 31-46-22 E a distance of 193.20 feet ;  
thence along a curve to the RIGHT, having a radius of 1833.45 feet, a distance of 82.42 feet  
to the point of beginning.

For a lot area of 19,755 s.f. or 0.45 Ac.

LOT B

Beginning at the northeasterly corner of the lot at Washington Street;  
thence bearing S 53-38-25 E a distance of 60.00 feet ;  
thence bearing S 36-21-35 W a distance of 200.68 feet ;  
thence along a curve to the LEFT, having a radius of 1833.45 feet, a distance of 63.49 feet ;  
thence along a curve to the LEFT, having a radius of 1833.45 feet, a distance of 82.42 feet ;  
thence bearing S 31-46-22 W a distance of 193.20 feet ;  
thence along a curve to the LEFT, having a radius of 44.00 feet, a distance of 55.84 feet ;  
thence along a curve to the LEFT, having a radius of 44.00 feet, a distance of 2.61 feet ;  
thence bearing S 46-02-00 W a distance of 66.97 feet ;  
thence along a curve to the RIGHT, having a radius of 110.00 feet, a distance of 1.71 feet ;  
thence along a curve to the RIGHT, having a radius of 110.00 feet, a distance of 144.18 feet ;  
thence bearing N 31-46-22 E a distance of 193.20 feet;  
  
thence bearing N 36-19-57 E a distance of 352.71 feet to the point of beginning.

For a lot area of 40,802 s.f. or 0.94 Ac.

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2018 MAR 27 PM 1:30

## LOT C

Beginning at the northeasterly corner of the lot at Braxton Street;

thence along a curve to the RIGHT, having a radius of 300.00 feet, a distance of 157.08 feet ;  
thence bearing S 72-01-37 E a distance of 40.10 feet ;  
thence along a curve to the LEFT, having a radius of 1025.00 feet, a distance of 462.15 feet ;  
thence bearing N 82-08-23 E a distance of 118.12 feet ;  
thence along a curve to the RIGHT, having a radius of 20.21 feet, a distance of 43.71 feet ;  
thence along a curve to the RIGHT, having a radius of 800.00 feet, a distance of 143.50 feet ;  
thence bearing S 36-21-35 W a distance of 56.23 feet ;  
thence bearing S 36-19-57 W a distance of 352.71 feet ;  
thence bearing S 31-46-22 W a distance of 193.20 feet ;  
thence along a curve to the LEFT, having a radius of 110.00 feet, a distance of 144.18 feet ;  
thence bearing S 45-41-49 W a distance of 594.96 feet ;  
thence bearing S 10-11-40 W a distance of 28.41 feet ;  
thence bearing S 45-41-49 W a distance of 332.41 feet ;  
thence bearing N 44-26-42 W a distance of 94.39 feet ;  
thence bearing N 32-12-54 E a distance of 3.47 feet ;  
thence bearing N 13-53-32 E a distance of 131.95 feet ;  
thence bearing N 12-00-06 W a distance of 101.00 feet ;  
thence bearing N 45-32-57 E a distance of 732.39 feet ;

thence bearing N 12-12-27 W a distance of 709.99 feet to the point of beginning.

For a lot area of 522,060 s.f. or 11.98 Ac.

The above-described Exhibit that contains a total area to be rezoned from Residential B Zone to Highway Business District. The total area owned by the Trustees of Thayer Academy is 13.79 acres, more particularly described in the Legal Description Rezoning prepared by Allen & Major in the original submission of Council Order #17-067.

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