

TOWN OF HARWICH PLANNING DEPARTMENT



**PLANNING BOARD APPLICATION
SUBDIVISION FORM B-1**

TO THE TOWN CLERK, HARWICH, MA

DATE 11/3/21

PART A – APPLICANT INFORMATION/AUTHORIZATION

Applicant Name(s)	EASTWARD COMPANIES
Representative/Organization (Who will serve as the primary contact responsible for facilitating this application?)	SUSAN LADUE REGULATORY SPECIALIST
Street/PO Box	155 CROWELL RD.
Town, ST, Zip	CHATHAM, MA 02633
Phone	508-945-2300
Fax	508-945-2374
E-mail	sladue@eastwardco.com

The applicant is one of the following: (please check appropriate box)

- Owner
 Tenant*
 Prospective Buyer*
 Representative for Owner/Tenant/Buyer
 Other* _____

***Written permission of the owner(s).**

All other forms and information as required in the Harwich Code §400 shall be submitted as part of this application including municipal lien certificate(s), available through the Tax Collector's Office.

Authorization

Your signature hereby asserts, to the best of your knowledge, that the information submitted in this application is true and accurate; that you agree to fully comply with the Town of Harwich Zoning By-laws and the terms and conditions of any approval of this application by the Planning Board; and authorizes the Members of the Planning Board and Town Staff to visit and enter upon the subject property for the duration of the consideration of this application.

Susan B. Ladue

Applicant

SEE ATTACHED SIGNED P+S AGREEMENT

Owner(s) – Authorization must accompany application if the owner is not the applicant.

Official use only:

PLANNING DEPARTMENT	TOWN CLERK
Case #	

PART B – PROJECT LOCATION

Street Address	0 ROUTE 39/ORLEANS ROAD		
Village	EAST HARWICH	Zip Code	02645
Map	63	Parcel	C3
Zoning District(s)	RR7, ZONE II/DWRPD		
Frontage (linear feet)	280'		
Total land area (SF)	376,425 S.F. / 8.64 ACRES		
Upland (SF)	308,684 S.F. / 7.08	Wetlands (SF)	67,741 S.F. / 1.55 AC.
Number of lots and/or parcels	Existing: 1	Proposed:	5 BUILDING LOTS 3 OP.SP. LOTS

The owner's title to said land is derived under deed from JAMES GIULETTI, ANITA DEMOPOULOS, + JOANNE HOLLIS dated 12/7/15, and recorded in the Barnstable Registry of Deeds Book and Page 29319/171 or registered in Barnstable County Land Court Certificate of Title No. DEBORAH SCANLON 8/7/18 BK 31451 PAGE 252.

PART C – PROJECT DESCRIPTION

Number of lots and/or parcels	Existing: 1	Proposed:	5 BUILDING LOTS 3 OP.SP. LOTS
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The undersigned owners of all land described herein submitted in the accompanying plan entitled OPEN SPACE PRELIMINARY SUBDIVISION PLAN and dated 10-20-21 request a determination and endorsement by said Board that approval by it under the **Subdivision**

Control Law MGL Ch. 41 Sec. 81K-GG: (check as appropriate)

is required (complete Part C.1 Subdivision) or **is NOT required** (complete Part C.2 ANR)

PART C.1 – Planning Board Approval is Required - Subdivision

- The accompanying plan is a (check one):
 - Preliminary plan PRELIMINARY GRID + OP.SP. SUBDIVISION PLANS
 - Definitive without a preliminary plan
 - Definitive following a Preliminary plan filed on _____ /case # PB _____
 - Modification of a Definitive plan approved on _____ /case # PB _____
 - Rescission of a Definitive plan approved on _____ /case # PB _____
- The applicant is also requesting a **Special Permit** to accompany the proposed plan for the following (check all that apply):
 - USE - Does not require Site Plan Review
 - ___ Open Space Residential Development
 - ___ Flexible Cluster Development/Six Ponds Special District
 - ___ Accessory Apartment
 - ___ Two-Family Dwellings
 - ___ Other _____
 - OVERLAY DISTRICT
 - ___ Water Resource Protection
 - ___ Harwich Center
 - ___ Six Ponds
 - ___ Village Commercial (Harwich Port)

*Note: Projects within the Harwich Center Overlay District may also be within the Harwich Center Historic District. This requires separate filing with the Historic District Commission. Please inquire with the Building Department for forms and instructions.

PART C.2 – Planning Board Approval is Not Required - ANR

The accompanying plan does not require approval by the Planning Board because:

NIA

1. The lots are created on an approved way, with proper frontage and are served by safe and adequate access as follows:

a. Every lot shown on the plan has frontage of at least such distance as is presently required by the Zoning Code of the Town of Harwich under Article VI: §325-15 and §325-16, Table 2 which requires _____ feet for erection of a building on such lot, **and**;

b. The lots shown on such plan front on one of the three types of ways specified in Chapter 41, Section 81L, MGL, **and**;

a public way or a way that the Harwich Town Clerk certifies is maintained and used as a public way namely _____, or

a way shown on a plan previously approved and endorsed in accordance with the subdivision control law namely _____ on _____ and subject to the following conditions _____; or

a private way in existence on March 25, 1949, the date when the subdivision control law became effective in the Town of Harwich, and

c. The public or private way named above has, in the opinion of the Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the land abutting or served thereby, and for the installation of municipal service to serve such land and the buildings existing thereon to be erected.

PROOF OF SAFE AND ADEQUATE ACCESS – Please attach all necessary documentation to this application for:

Determination of Safe and Adequate Access for existing conditions

Satisfaction of Safe and Adequate Access for proposed conditions

2. The accompanying plan is not a subdivision because the plan does not show a division of land.

3. The division of the tract of land shown on the accompanying plan is not a "subdivision" because it shows a proposed conveyance/other instrument, namely _____ which adds to/takes away from/changes the size and shape of, lots in such a manner so that no lot affected is left without frontage as required by Zoning Code of the Town of Harwich under Article VI: §325-15 and §325-16, Table 2 which requires _____ feet.

4. The division of the tract of land shown on the accompanying plan is not a subdivision because two or more buildings, specifically _____ buildings were standing on the property prior to March 25, 1949 the date when the subdivision control law went into effect in the Town of Harwich and one of such buildings remains standing on each of the lots/said buildings as shown and located on the accompanying plan. Evidence of the existence of such buildings prior to the effective date of the subdivision control law as follows:

5. Other reasons or comments: (See MGL, Ch41, §81-L)

EASTWARD COMPANIES

November 3, 2021

Harwich Planning Board
732 Main Street
Harwich, MA 02645

RE: 0 Route 39 – Preliminary Subdivision Plan

Dear Members of the Board:

The attached preliminary plan items are being submitted for review at your meeting on Tuesday, December 14, 2021.

We are asking for a waiver of the requirement to submit 3 roadway names at this point and allow us to submit 3 roadway names at the Definitive Subdivision Plan stage.

Please let me know if you have any questions or need additional information.

Sincerely,



Susan B. Ladue
Regulatory Specialist

PURCHASE AND SALE AGREEMENT

From the Office of:
J .Alexander Watt, Esq.
P.O. Box 881
Barnstable, MA 02630
(508) 362-1900

This 8th day of October, 2021

1. PARTIES AND MAILING ADDRESS
(fill in)
Robert D. Fratus, Jr., of 74 Hawksnest Road, Harwich, MA, hereinafter called the SELLER, agrees to SELL and Eastward MBT, LLC, Trustee of Eastward Companies Business Trust of 155 Crowell Road, Chatham, MA, hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms hereinafter set forth, the following described premises:
2. DESCRIPTION
The land in Harwich, MA known 0 Orleans Road, shown on Plan Book 604, Page 59. For SELLER's title, see deed at Book 29319, Page 171 and Book 31451, Page 252.
3. BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES
(fill in or delete)
~~Included in the sale as a part of said premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the SELLER and used in connection therewith including, if any, all wall-to-wall carpeting, drapery rods, automatic garage door openers, venetian blinds, window shades, screens, screen doors, storm windows and doors, awnings, shutters, furnaces, heaters, heating equipment, stoves, ranges, oil and gas burners and fixtures appurtenant thereto, hot water heaters, plumbing and bathroom fixtures, garbage disposers, electric and other lighting fixtures, mantels, outside television antennas, fences, gates, trees, shrubs, plants and refrigerator, air conditioning equipment, ventilators, dishwasher, washing machine and dryer; and LAND ONLY~~
4. TITLE DEED
(fill in)
* Said premises are to be conveyed by a good and sufficient quitclaim deed running to the BUYER or to the nominee designated by the BUYER by written notice to the SELLER at least seven (7) days before the deed is to be delivered as herein provided, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:
 - (a) Provisions of existing building and zoning laws;
 - (b) Existing rights and obligations in party walls which are not the subject of written agreement;
 - (c) Such taxes for the then current year as are not due and payable on the date of delivery of such deed;
 - (d) Any liens for municipal betterments assessed after the date of this agreement;
 - (e) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the current use of said premises;
 - (f)

- 5. PLANS
If said deed refers to a plan necessary to be recorded therewith, SELLER shall deliver such plan with the deed in form adequate for recording or registration.
- 6. REGISTERED TITLE
In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the BUYER to a Certificate of title of said premises, and the SELLER shall deliver with said deed all instruments, if any, necessary to enable the BUYER to obtain such Certificate of Title.
- 7. PURCHASE PRICE (fill in)
The agreed purchase price for said premises is

\$	have been paid as an offer of purchase this day;
\$	are to be paid upon the signing of the Purchase and Sale Agreement;
\$	are to be paid at the time of delivery of the deed in cash or by certified cashier's, treasurer's or bank check(s).
\$ _____	
\$	TOTAL
- 8. TIME FOR PERFORMANCE; DELIVERY OF DEED (fill in)
Such deed is to be delivered at 11:00 a.m. on or before the 15th day of November, 2021 at the Barnstable Registry of Deeds, unless otherwise agreed upon in writing. It is agreed that time is of the essence of this agreement.
- 9. POSSESSION AND CONDITION OF PREMISES (attach a list of exceptions, if any)
Full possession of said premises free and clear of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable wear and tear excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with the provisions of any instrument referred to in clause 4 hereof. The BUYER shall be entitled personally to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.
- 10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM (Change period of time if desired)
If the SELLER shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto, unless the SELLER shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the SELLER shall give written notice thereof to the BUYER at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days.
- 11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.
If at the expiration of the extended time the SELLER shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made hereunder shall be forthwith refunded and all other

obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

12. BUYER'S ELECTION TO ACCEPT TITLE
- The BUYER shall have the election, at either the original or any extended time for performance, to accept such title as the SELLER can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case the SELLER shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the said premises shall have been damaged by fire or casualty insured against, then the SELLER shall, unless the SELLER has previously restored the premises to their former condition, either
- (a) pay over or assign to the BUYER, on delivery of the deed, all amounts; recovered or recoverable on account of such insurance, less any amounts reasonably expended by the SELLER for any partial restoration, or
 - (b) if a holder of a mortgage on said premises shall not permit the insurance proceeds or a part thereof to be used to restore the said premises to their former condition or to be so paid over or assigned, give to the BUYER a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of said mortgage less any amounts reasonably expended by the SELLER for any partial restoration.
13. ACCEPTANCE OF DEED
- The acceptance of a deed by the BUYER or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of the deed.
14. USE OF MONEY TO CLEAR TITLE
- To enable the SELLER to make conveyance as herein provided, the SELLER may, at the time of delivery of the deed, use the purchase money or any portion thereof, to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.
15. INSURANCE
*Insert amount (list additional types of insurance and amounts as agreed)
- Until the delivery of said deed the SELLER shall maintain insurance on said premises as follows:
- | <i>Type of Insurance</i> | <i>Amount of Coverage</i> |
|---------------------------------|---------------------------|
| (a) Fire and Extended Coverage) | \$ |
| (b) | |
- AS PRESENTLY INSURED
16. ADJUSTMENTS
(list operating expenses, if any, or attach schedule)
- ~~Collected rents, mortgage interest, water and sewer use charges, operating expenses (if any) according to the schedule attached hereto or set forth below, and taxes for the then current fiscal year, shall be apportioned and fuel value shall be adjusted, as of the day of performance of this agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the BUYER at the time of the delivery of the deed. Uncollected rents for the current rental period shall be apportioned if and when collected by either party.~~
17. ADJUSTMENT OF UNASSESSED AND
- If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal

ABATED TAXES

year, with a reapportionment as soon as the new tax rate and valuation can be ascertained, and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

18. **BROKER'S FEE**
(fill in fee with dollar amount or percentage; also name of Brokerage firm(s))

A Broker's fee for professional services of 4% of the purchase price is due from the SELLER to-SELLER's broker, Steele Associates Real Estate.

No commission is due unless title passes under the agreement to the BUYER therein named and the full consideration is received by SELLER and not otherwise, regardless of the reason that the foregoing does not take place.
19. **BROKER'S WARRANTY**
(fill in name)

The Broker(s) named herein, Steele Associates Real Estate warrant(s) that the Broker(s) is (are) duly licensed as such by the Commonwealth of Massachusetts.
20. **DEPOSIT**
(fill in name)

All deposits made hereunder shall be held in escrow by Steele Associates Real Estate as escrow agent subject to the terms of this agreement and shall be duly accounted for at the time for performance of this agreement. In the event of any disagreement between the parties, the escrow agent may retain all deposits made under this agreement pending instructions mutually given by the SELLER and the BUYER.
21. **BUYER'S DEFAULT; DAMAGES**

If the BUYER shall fail to fulfill the BUYER'S agreement herein, all deposits made hereunder by the BUYER shall be retained by the SELLER as liquidated damages, ~~unless within thirty (30) days after the time for performance of this agreement or any extension hereof, the SELLER otherwise notifies the BUYER in writing.~~ and this shall be the SELLER's sole remedy at law or in equity.
22. **RELEASE BY HUSBAND OR WIFE**

The SELLER's spouse hereby agrees to join in said deed and to release and convey all statutory and other rights and interests in said premises.
23. **BROKER AS PARTY**

The Broker(s) named herein join(s) this agreement and become(s) a party hereto, insofar as any provisions of this agreement expressly apply to the Broker(s), and to any amendments or modifications of such provisions to which the Broker(s) agree(s) in writing.
24. **LIABILITY OF TRUSTEE, SHAREHOLDER BENEFICIARY, etc.**


If the SELLER or BUYER executes this agreement in a representative or fiduciary capacity, only the principal or the estate representative shall be bound, and neither the SELLER or BUYER so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.
25. **WARRANTIES AND REPRESENTATIONS**
(fill in); If none, state "none"; if any listed, indicate by whom each warranty or represen-

tation was made

26. MORTGAGE CONTINGENCY CLAUSE
(omit if not provided for in Offer to Purchase)
- In order to help finance the acquisition of said premises, the BUYER shall apply for a conventional bank or other institutional mortgage loan of \$ _____, at prevailing rates, terms and conditions. If despite the BUYER'S diligent efforts a commitment for such loan cannot be obtained on or before , the BUYER may terminate this agreement by written notice to the SELLER and/or the Broker(s), as agent(s) for the SELLER, prior to the expiration of such time, whereupon any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto. In no event will the BUYER be deemed to have used diligent efforts to obtain such commitment unless BUYER submits a complete mortgage loan application conforming to the foregoing provisions on or before .
27. CONSTRUCTION OF AGREEMENT
- This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and enures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the SELLER and the BUYER. If two or more persons are named herein as BUYER their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.
28. LEAD PAINT LAW
- ~~The parties acknowledge that under Massachusetts law, whenever a child under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age.~~
29. SMOKE AND CARBON MONOXIDE DETECTORS
- ~~The SELLER shall, at the time of the delivery of the deed, deliver a certificate from the fire department of the city or town in which said premises are located, stating that the premises have been equipped with approved smoke detectors in conformity with applicable law.~~
30. ADDITIONAL PROVISIONS
- The initialed riders, if any, attached hereto, are incorporated herein by reference.
- (a) ~~Subject to BUYER's determination on or before July 6, 2021 that the property can be divided into 6 buildable lots. BUYER may terminate this agreement in writing if 6 lots are not allowed. See Addendum A incorporated herein.-~~
- (b) **Buyer Access to Premises:** SELLER hereby agrees that BUYER and BUYER'S representatives shall have the right to enter the premises to inspect, survey, take measurements and to show the premises to contractors, engineers, Town of Harwich Board Members or employees from the date of this Agreement, up to and including the date for delivery of deed. Additionally, the SELLER herein authorizes the BUYER to have BUYER'S surveyor install stakes at the premises, marking the location of the lot lines, proposed road construction, and the like. BUYER hereby indemnifies and agrees to hold harmless the SELLER from any and all damage to the premises and claims for injury to BUYER or BUYER'S representatives, contractors, architects, and other invitees.

FOR RESIDENTIAL PROPERTY CONSTRUCTED PRIOR TO 1978, BUYER MUST ALSO HAVE
SIGNED LEAD PAINT PROPERTY TRANSFER NOTIFICATION CERTIFICATION

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.



SELLER

SELLER

SELLER

SELLER

Imad Z. Poyant MANAGER

BUYER

BUYER

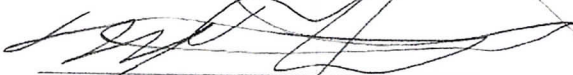
Broker(s)

EXTENSION OF TIME FOR PERFORMANCE

Date _____, 2021

The time for performance of the foregoing agreement is extended until _____ o'clock __.M. on the ____ day of _____, 2021, time still being of the essence of this agreement as extended. In all other respects, this agreement is hereby ratified and confirmed.

This extension, executed in multiple counterparts, is intended to take effect as a sealed instrument.



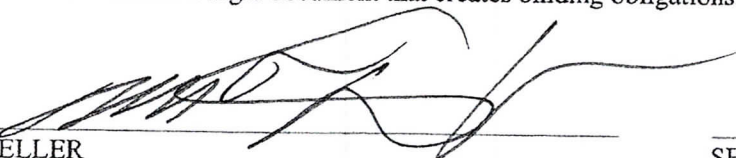
SELLER (or spouse)

BUYER

BUYER

Broker(s)

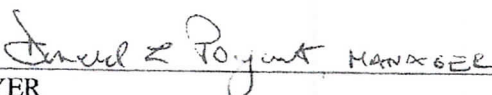
NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.


SELLER

SELLER

SELLER

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BUYER

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SELLER (or spouse)

BUYER

BUYER

Broker(s)