KOPELMAN AND PAIGE, P.C.
The Leader in Public Sector Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

Gregg J. Corbo
gcorbo@k-plaw.com

June 13, 2016

Hon. Kelly Ross and
Members of Board of Selectmen
Westford Town Hall
55 Main Street
Westford, MA 01886

Re: Drew Farm APR Amendment

Dear Members of the Board of Selectmen:

I am writing in response to your request for clarification regarding the process for amending an Agricultural Preservation Restriction ("APR") that the Town holds on two adjoining parcels of land located at 66 Boston Road and known as "Drew Farm" (the "Property"). Specifically, you would like to know: (1) whether a decision to amend an Agricultural Preservation Restriction requires a two-thirds vote of Town Meeting; (2) whether the decision to amend an Agricultural Preservation Restriction requires approval of the Massachusetts Legislature in accordance with Article 97 of the Massachusetts Constitution; and (3) whether the decision to amend the Agricultural Preservation Restriction requires approval of the Department of Agriculture.

Whether the Selectmen need the approval of a two-thirds Town Meeting vote and/or the approval of the State Legislature under Article 97 depends, in my opinion, on whether the proposed change to the APR constitutes a release of the Town's interest in the APR or whether it is a mere amendment to that interest. Although this is an issue in which the statutes and case law do not offer clear guidance, it is my opinion that the Selectmen's considerable discretion in establishing the terms of the APR, when combined with the rights retained by the Town after the proposed amendment, reasonably supports the conclusion that the change under consideration will result in an amendment of the APR that does not require a two-thirds vote of Town Meeting or the State Legislature.

Background

By way of background, at the Special Town Meeting held on October 21, 1996, the Town voted to authorize the Board of Selectmen "to acquire over the period of three fiscal years the development rights to an agricultural preservation restriction on, and an option to purchase agricultural rights in certain real property consisting of two parcels totaling 8.97 acres located on Boston Road known as Drew Farms . . . The remaining terms to be negotiated by the Board of Selectmen." (emphasis supplied). In accordance with this Town Meeting vote, over the course of the next three fiscal years, the Board acquired three related APRs on the Property for which it paid cash consideration of $125,000 each (separately referred to herein as "APR 1", "APR 2" and "APR 3"). APR 1 and APR 2 generally prohibit the use of the Property for non-agricultural purposes, and APR 3 generally prohibits the use of the Property for non-agricultural purposes and generally allows for continued use of an existing "country store" building. Included in each of the three APRs is a right of first refusal for the benefit of the Town

should the Property be offered for sale. Each of the three APRs was approved by the Commissioner of Food and Agriculture, but no State funds were used in connection with the purchase.

Since the Town's acquisition of the APRs, the Property has been allowed to lie fallow for several years, and the "country store" building is vacant and in disrepair, such that they have become a blight on the surrounding neighborhood. In 2015, Town officials were approached by a potential purchaser who submitted a development plan to reestablish the agricultural use of the Property through the installation and maintenance of a high tensile orchard, cherry trees, a greenhouse, and row crops. The buyer's ability to maintain these proposed agricultural uses, however, is dependent upon the ability to use a portion of the Property for a farm-to-table restaurant and function room with related parking, which necessitates the removal of the "country store" structures. In light of this proposal and in consultation with Town officials and the Drew Farm Task Force, the Board of Selectmen found that the viability of the two parcels for sustained agricultural use is limited due to their small size, topography and location, and that allowing the use of one of the APR areas for restaurant and function hall purposes would have a positive effect on the public good and yield a substantial benefit to the agricultural resources of the Town.

As a result of its support of the project, the Board voted not to exercise its right of first refusal, and the buyer purchased the property subject to the existing three APRs. In conjunction with the Board's decision not to exercise the right of first refusal, the Board and the buyer entered into an agreement to amend APR 3 to allow the construction and operation of an up to 16,500 square foot building with related parking and utilities, to be used for restaurant and banquet hall purposes. Any exercise of rights under the proposed amendment are expressly contingent upon the two contiguous parcels being actively engaged in agricultural use, and the Town expressly retains its right of first refusal. The agreement to amend APR 3 was made contingent upon approval of the amendment by Town Meeting. When the question was presented at the Annual Town Meeting on April 2, 2016, the question failed to obtain a majority vote in favor. It is my understanding, however, that the buyer has approached the Board of Selectmen with a revised proposal to reduce the size of the building being proposed.

Town Meeting Quantum of Vote

Pursuant to M.G.L. c. 184, §32, an APR is considered an interest in land, and the statute states that "the restriction may be released, in whole or in part, by the holder for consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in Land. . . ." (emphasis supplied). The statute does not define the term "release," and I am not aware of any case law interpreting the statute in a context similar to this one. Although reasonable minds may differ, it does not appear that the Board of Selectmen is seeking to release the Town's interest in the APRs. To the contrary, through the proposed amendment, the Town expressly retains all of its rights under the three APRs, including the right to require that the Property be used for agricultural purposes and the right of first refusal. The only proposed change is an amendment to the general conditions of APR 3 to allow a use incidental to the other agricultural uses of the property. In fact, the amendment is

specifically conditioned on the owner restoring the land of the two contiguous parcels to active agricultural use. Therefore, in my opinion, it is reasonable to conclude that the proposed amendment to APR 3 is not a "release" within the meaning of M.G.L. c. 184, §32, and as such, it is not a disposition of the Town's interest in the land.

Because it does not appear that the Town is releasing its interest in the APR, it can be argued that Town Meeting approval was not even required to authorize the amendment. While the General Laws require Town Meeting approval for the Board of Selectmen to acquire and dispose of interests in land, the terms of such transactions are generally left to negotiation by the Board. In fact, when Town Meeting authorized acquisition of the subject APRs, Town Meeting specifically left negotiation of the specific terms to the Board of Selectmen. I am not aware of any provision in the General Laws that requires Town Meeting approval for an amendment in the terms of an existing interest in land. To the contrary, M.G.L. c. 40, §3 allows the Board of Selectmen to make such orders as it may deem necessary or expedient for the use of its corporate property. Therefore, in this circumstance where the Board of Selectmen appear to have the authority to act without Town Meeting approval, it can be argued that any Town Meeting vote is advisory in nature and, any such advisory vote may be by simply majority.

Even assuming that the amendment can be considered a disposition of the Town's interest in the property, it is my opinion that the amendment is subject to approval by majority vote at Town Meeting. Pursuant to M.G.L. c. 40, §3, the Board of Selectmen may convey an interest in the Town's real estate when authorized to do so by a majority vote at Town Meeting. A two-thirds vote is only required when the land is held for a particular purpose and it needs to be transferred for some other purpose, such as for purposes of conveyance. See, M.G.L. c. 40, §15A. In this matter, the Board is not seeking to change the purpose for which the restriction is held by the Town. The Town's only interest in the property is to ensure that the requirements of the restriction are complied with and to exercise its right of first refusal, if applicable. This purpose does not change as a result of the proposed amendment. In fact, even after the amendment, the Town retains the right to enforce the restrictions and to exercise its right of first refusal. Therefore, because the purpose for which the property is held by the Town remains the same, it is my opinion that any change in the terms of APR 3, to the extent such change is considered a disposition, requires only a majority vote at Town Meeting.

Applicability of Article 97

Article 97 states, in relevant part, that "Lands and easements taken or acquired for [agricultural] purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court." According to guidance from the Massachusetts Executive Office of Environmental Affairs, Article 97 is triggered when there is:

> a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or

> license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

http://www.mass.gov/eea/agencies/mepa/about-mepa/eea-policies/eea-article-97-land-disposition-policy.html

In this matter, as previously discussed, it does not appear that the Town intends to transfer or convey any interest in the Property and the proposed amendment does not effect any change in physical or legal control of the Property. The Town continues to hold the right to enforce the APRs and its right of first refusal. Moreover, the proposed amendment is expressly conditioned upon the property owner maintaining the land in active agricultural use, and the amendment is revocable if that condition is not met. Therefore, it is reasonable to conclude that the amendment is not a disposition that triggers the requirements of Article 97. See Mahajan v. Department of Environmental Protection, 464 Mass. 604 (2013) (although the granting of an easement over Article 97 land is a disposition, a disposition of a lesser property interest, such as a Chapter 91 license is not a disposition); McClure v. Epsilon Group, LLC, 19 LCR 384 (Land Court 2011) (no disposition for Article 97 purposes where the benefitted party has not given up any rights under a restriction); Miller v. Commissioner of DEP, 23 Mass.App.Ct. 968 (1987) (revocable permit to operate ski area not a disposition for Article 97 purposes).

While it seems reasonably clear that the amendment is not a disposition for Article 97 purposes, the question of whether the amendment constitutes a change in use for Article 97 purposes is a closer one. While the Property has not previously been used as a restaurant/function hall, in my opinion, that is not the sole deciding factor in determining whether there is a change in use for Article 97 purposes. When Town Meeting authorized acquisition of the APRs, it left the determination of what uses would be allowed to the discretion of the Board of Selectmen. There is nothing in the Town Meeting vote that limits the Board's discretion or that suggests that the Board could not have allowed this use in connection with the original APRs. If the Board could have allowed this use as part of the original APRs, it can be argued that an amendment of the APR does not constitute a change in use for purposes of Article 97.

Moreover, although the Town acquired three APRs, the subject property comprises two abutting parcels, and it is my understanding that they have historically been used as one. In fact, it is my understanding, based on the configuration of the property lines, that it is unlikely that the parcels could be separated. The three APRs work in concert with each other to ensure that the Property as a whole remains in agricultural use. Even with the two parcels combined, however, the Board of Selectmen found that the viability of the property for sustained agricultural use is limited due to its small size, topography and location. This finding is supported by the fact that the parcels have been allowed to lie fallow for several years, and the "country store" building is vacant and in disrepair, such that they have become a blight on the surrounding neighborhood.

Based on the property owner's stated intention of restoring agricultural use on the property, the Board found that allowing the use of one of the APR areas for restaurant and function hall purposes would have a positive effect on the public good and yield a substantial benefit to the agricultural resources of the Town. The proposed amendment is expressly conditioned upon the requirement that the remainder of the property be kept in active agricultural use, and the Board of Selectmen retains the authority to enforce the terms of the APRs should the property owner fail to comply with that requirement. Therefore, in light of these factors, it is reasonable to conclude that the amendment promotes the agricultural uses of the Property rather than changing the use of the Property to something different. Therefore, it is my opinion that the Board of Selectmen may reasonably determine that the amendment does not constitute a change in use for purposes of Article 97.

Approval of Department of Agriculture

Prior to submission of the matter to Town Meeting, the Director of Land Use Management obtained an opinion from Christine Chisholm, APR Regional Planner at the Department of Agricultural Resources, who opined that the Department's approval of the proposed amendment was not required.

In summary, the determination of whether the proposed amendment constitutes a release of the APRs or change in use for Article 97 purposes requires a highly fact-specific determination, and judging by the amount of public discussion and controversy that this matter has generated, it is a determination in which reasonable minds can differ. Although I have researched the issue, I have not found any precedent which conclusively supports or contradicts the Board's decision to treat the proposal as an amendment rather than a release of the APR. As with any other matter of interest to the public, there is always a risk of legal challenge. While I cannot predict the outcome of any such legal challenge, it is my opinion that the Board has reasonable support for its position that the proposed amendment does not require the approval of a two-thirds Town Meeting vote and/or the approval of the State Legislature under Article 97.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

Gregg J. Corbo

GJC/lem
557068/WSFD/0076

KOPELMAN AND PAIGE, P.C.
The Leader in Public Sector Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

Gregg J. Corbo
gcorbo@k-plaw.com

June 23, 2016

Ms. Jodi Ross
Town Manager
Westford Town Hall
55 Main Street
Westford, MA 01886

Re: Drew Farm APR Amendment – Spot Zoning

Dear Ms. Ross:

I am writing in response to your inquiry as to whether the proposed amendment to the Drew Farm Agricultural Preservation Restriction constitutes "spot zoning." Before explaining the concept of spot zoning and how it relates to this proposed project, I wish to point out that the matter pending before the Board of Selectmen does not directly implicate the Town's zoning bylaws. As with any other type of project proposed in Town, the project proposed for the Drew Farm property will require a number of licenses, permits and approvals from Town boards and commissions, and it will have to comply with all applicable laws. While an amendment to the APR may be a necessary requirement for the project to go forward, it is not the only requirement. If the Board of Selectmen decides to amend the APR, in my opinion, that decision will not excuse the property owner from compliance with all other applicable laws, including the Town's zoning bylaws. In fact, the agreement between the Board of Selectmen and the property owner specifically states that "[t]he Buyer acknowledges and agrees that certain discretionary permits, licenses and approvals will be required to complete the Project and nothing herein shall be deemed to waive the Buyer's obligations to apply for and comply with all such permits, approvals and conditions governing the Project, and the Town does not hereby promise or guarantee that any such permits, licenses or approvals will be granted." Therefore, even if the Board of Selectmen approves the APR amendment, the proposed project cannot go forward unless it complies with all other applicable laws, including the Town's zoning bylaws.

With regard to the question of "spot zoning," it is my opinion that the rule against spot zoning does not apply in this context. Spot zoning occurs when a particular parcel of land is arbitrarily singled out for special zoning treatment different from that of similar surrounding land without any apparent circumstances warranting such treatment. Rosco v. Marlborough, 355 Mass. 51 (1968). Spot zoning is prohibited by the Zoning Act, M.G.L. c. 40A, s. 4, which provides that "any zoning ordinance or by-law which divides cities and towns into districts shall be uniform within the district for each class or kind of structures permitted." Rando v. North Attleborough, 44 Mass.App.Ct. 603 (1998). The prohibition against spot zoning, however, applies only to legislative amendments to the Town's zoning bylaws. It does not apply to discretionary permitting decisions. Kiss v. Board of Appeals of Longmeadow, 371 Mass. 147, 156 (1976). As observed by the Supreme Judicial Court, the decision to grant a variance or special permit does not reclassify the land or in

any way amend the bylaw with respect to the uses which are permitted in the district. The Board does not usurp the legislative power of the Town in granting the special permit or variance; rather, it exercises the discretionary power which the voters of the Town expressly delegated to the Board. Id.

In this matter, it is my understanding that the subject property is in the Residence A zoning district and that a restaurant/function hall use may not be allowed in that district. Section 9.2.2(2) of the Town's zoning bylaws, however, allows the Board of Appeals to grant use variances to authorize uses or activities not otherwise permitted in the district in which the land or structure is located. Whether or not the project qualifies for a use variance is a decision that the Board of Appeals will have to make if and when a proper variance application is presented. As previously discussed, if the use is not allowed as of right, the property owner will have to go through that process prior to proceeding with the project, even if the Board of Selectmen decide to amend the APR. Therefore, because neither the APR amendment nor the granting of a variance results in an amendment to the Town's zoning bylaws, in my opinion, the rule against spot zoning does not apply.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

Gregg J. Corbo

GJC/lem
558112/WSFD/0076

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Monday, July 25, 2016 2:55 PM
To: 'Jodi Ross'
Cc: John Giorgio
Subject: RE: Re: 66 Boston Road Documents for 7-26-2016

Dear Jodi:

As the APR is currently written, the Town's right of first refusal is triggered by the "sale of all, or any portion of, or any interest in, the Premises to a third party", with certain exceptions. It does not appear that this language addresses a situation in which the property is owned by an LLC and interests in the LLC are transferred or conveyed in some manner. Please be advised that a transfer of interests in an LLC is not as straight forward as an outright sale of the property. For example, given that members can join an LLC with or without contribution and the interest of one member can be higher or lower than the interests of other members or classes or members, it may be difficult to determine what price the Town is being asked to match and what the value of a particular interest is. While I believe that we can craft terms of an amendment to the APR to address this issue, any resolution may be difficult to administer in practice.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

Gregg J. Corbo

Kopelman and Paige is now KP | LAW

Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
gcorbo@k-plaw.com
www.k-plaw.com

From: Jodi Ross [mailto:jross@westfordma.gov]
Sent: Friday, July 22, 2016 3:23 PM
To: Gregg J. Corbo
Subject: Fwd: Re: 66 Boston Road Documents for 7-26-2016

Could you please provide this to me prior to Tuesday evenings meeting?
----- Original Message -----

Jodi,

When Greg came to the BoS meeting, he indicated that there were important differences between an agreement with Ebi directly versus with an LLC. I would like to understand the implications of those differences to the Town before agreeing to anything that changes the agreement to an LLC. Could you ask Greg to comment before Tuesday evening?

Thanks

Scott

Greg Johnson writes:
Good afternoon,

Jodi asked that you are provided with the attached two documents from after the town meeting regarding Drew Gardens: First Amendment to the APR with revisions shown, and First Amendment to Agreement with revisions shown.

Please let me know if you are unable to access the documents.

Best Regards,

Greg

Gregory W. Johnson
Project/Procurement Specialist (978) 692-5501
Town Manager's Office, Westford, MA

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Tuesday, August 09, 2016 3:28 PM
To: 'Chris Kluchman'
Cc: Jodi Ross; aps@sally-fitch.com; John Giorgio
Subject: RE: DFTF questions for Town Counsel

Dear Chris:

In response to the inquiry below, it is my opinion that the term "actively engaged" in APR 3 does not require that more than fifty-one percent of the income attributed to that parcel be from agricultural use. By way of background, the property at issue is comprised of two adjoining parcels that are divided into three APR areas. My understanding of the reason for having three APR areas was to enable the Town to distribute the purchase price across three fiscal years, but that the parcels have always been considered a single property for purposes of preserving its agricultural use. To this end, each of the three APRs states that one of the purposes is to "maintain land in active agricultural use". APR 1 and APR 2 define the term "actively engaged" as "deriving at least fifty-one percent (51%) of annual gross farm income from agricultural uses on the Premises." APR3, however, defines "actively engaged" as "deriving substantial annual farm income from agricultural uses of all available areas and the two contiguous parcels are referenced in Section VI of the Premises."

Based on these definitions, and the intent of the three APRS, it is my opinion that the "actively engaged" requirement of APR 3 can be met even if restaurant revenue exceeds farm revenue. As I have previously opined, I believe that the overall purpose of the three APRs is to ensure that the property as a whole is returned to active agricultural use after years of neglect and decay. This interpretation is supported by the definition of "actively engaged" in APR 3, insofar as it specifically references uses occurring on the other two APR areas. In this regard, it is my understanding that the parts of the property subject to APRs 1 and 2 will be dedicated almost entirely to raising crops and that one hundred percent of the revenue from those two APR areas will be from agricultural uses occurring at the property. It is also my understanding that at least some of the products sold in the restaurant will be from crops grown on the property. Although the term "substantial annual farm income" is not defined in APR 3, in my opinion, this requirement is met where 100% of the revenue attributable to two of the APR areas will be from agricultural uses and at least a portion of the restaurant revenue will be derived from the agricultural uses of the property. Therefore, it is my opinion that the "actively engaged" requirement of APR 3 can be met even if restaurant revenue exceeds farm revenue.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

Gregg J. Corbo

Kopelman and Paige is now KP | LAW

Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735

gcorbo@k-plaw.com
www.k-plaw.com

From: Chris Kluchman [mailto:ckluchman@westfordma.gov]
Sent: Monday, August 01, 2016 8:28 AM
To: Gregg J. Corbo
Cc: Jodi Ross; aps@sally-fitch.com
Subject: Fwd: DFTF questions for Town Counsel
Importance: High

Hi Gregg - Please see the questions below relating to the specific language of the APRs on 66 Boston Road being posed by a member of the Drew Gardens Task Force. Their next meeting is 8/11 in the evening. Can you please provide your response by 8/5? If not by that time, then by 8/9.

If you have any questions, please let me know (I'm out of the office after noon on 8/3 and back on 8/8).

Thanks, Chris K.

Chris Kluchman, FAICP
Director of Land Use Management
Town of Westford
55 Main Street
Westford, MA 01886
ckluchman@westfordma.gov
tel. 978-692-5524

----- Original Message -----

Message Fri, Jul 29, 2016 7:27 AM
From: Bob Boonstra
To: Andrea Peraner-Sweet
Cc: Chris Kluchman
Subject: DFTF question for Town Counsel

Andrea, Chris,

I would like to have Town Counsel answer the question below. If possible, I would like to discuss the answer during our APR sub-task-force meeting(s) pri9or to the next Task Force meeting on the 11th.
-- Bob

This question has to do with the definition of "Actively Engaged" in II.2, as "deriving at least fifty-one percent (51%) of annual gross farm income from agricultural uses on the Premises."

Questions:
1) Does the "actively engaged" definition restrict the income that could allowably be produced by other income producing activities on APR 1 land (e.g., a farmstand or a restaurant)? That is, by way of example, if the maximum practical agricultural produce has a gross value of, say, $100K/year, does the 51% clause limit the allowable revenue from a farmstand / restaurant to <$100K??
2) More specifically, does approval of a Restaurant with income greater than the value of the agricultural produce require a change to the "51%" clause in the APR? This definition appears in all three of the APRs/

For reference, the "Actively Engaged" phrase is referred to at least twice. First, in I. Statement of Purpose: "... the intent of the Town of Westford to ... maintain land in active agricultural use...". The Statement of Purpose is referred to in III.B(1), Prohibited Uses: "No use shall be made of the Premises, and no activity thereon shall be permitted, which is inconsistent with the intent ... as stated in the Statement of Purpose. Second, in III.F, Affirmative Covenant, "The Grantors agree ... that the Premises shall remain in active agricultural use..."

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Thursday, August 18, 2016 5:02 PM
To: 'Jodi Ross'; Chris Kluchman; Andrea Peraner-Sweet
Cc: Kelly Ross; John Giorgio
Subject: RE: Fwd: Last Night's Questions on 66 Boston Road

Dear Jodi:

I am writing to follow-up on my June 3, 2016 opinion concerning the process for amending an Agricultural Preservation Restriction ("APR") that the Town holds on a parcel of land located at 66 Boston Road and known as "Drew Farm" (the "Property"), to answer additional questions that you have raised. Specifically, you have asked the following questions: (1) Can the property owner install a chain link fence across the parking lot entrance to the property and add "No Trespassing" signs; (2) Will the APR have to be amended if the property owner wishes to allow the Town to construct public sidewalks on the property; (3) Does the Commonwealth have an interest in the APR that would require that any amendment be approved by a state agency; and (4) is the property owner in violation of the APR if he is not currently conducting agricultural activities on the property or is his plan for future use sufficient to satisfy the requirements of the APR? I will answer each of these questions, in turn, below.

1. **Can the property owner install a fence and "No Trespassing" sign on the property?**

There is no provision in the APR which expressly or impliedly prohibits the property owner from installing a fence and a "No Trespassing" sign. The APR does, however, state that the owner retains the right of privacy in its use of the property. See, APR, para. III(A)(1). Whereas, it appears that the fence and sign will promote the public's interest in keeping trespassers out of the property and will preserve the property owner's retained right of privacy, in my opinion, the APR does not prohibit or require approval for the installation of such features. Please be advised, however, that the property owner may have to obtain other permits or approvals in the same manner as any other similarly situated property owner in Town.

2. **Will the APR have to be amended if the property owner wishes to allow the Town to construct public sidewalks on the property?**

In his agreement with the Town, the buyer agreed to "build sidewalks along Boston Road for the length of the Property, in accordance with specifications and a schedule to be provided by the Town." It is my understanding that, at this juncture, the Town has not finalized its plans with respect to the specifications and schedule for construction of the sidewalk. Until the Town's plans are finalized, it is difficult to opine with certainty as to how the APR will affect the project. That being said, it is my opinion that, even if the project is funded all or in part by the property owner, the APR will not apply to any project by the Town to construct sidewalks within the Town's right of way for Boston Road, and it will not apply to any project by the Town to construct sidewalks within an easement or some other right conveyed by the property owner.

3. **Does the Commonwealth have an interest in the APR that would require that any amendment be approved by a state agency?**

In my opinion, the Commonwealth does not have any interest in the APR that would require that any amendment be approved by a state agency. Although the APR was signed by the Commissioner of Food and Agriculture, the APR was not purchased with any funds provided by the Commonwealth and the Commonwealth does not have any rights in the APR. In my opinion, the Commissioner did not sign the APR as a party thereto. Rather, the Commissioner

merely signed the APR in accordance with M.G.L. c. 184, §32 (1st paragraph), which signature provides the Town with stronger enforcement rights. It is my understanding that the Commonwealth's lack of interest in this matter was confirmed by the Director of Land Use Management after discussing the proposed Amendment with Christine Chisholm, APR Regional Planner at the Massachusetts Department of Agriculture, who opined that the proposed amendment does not need the Commonwealth's approval.

4. **Is the property owner in violation of the APR if he is not currently conducting agricultural activities on the property or is his plan for future use sufficient to satisfy the requirements of the APR?**

Although the APR requires that the property be maintained in active agricultural use, there does not appear to be any mechanism in the APR for enforcing this requirement, such as authority to assess financial penalties or take any rights in the property. In my opinion, the current status of the property where there is no agricultural use stands in contrast to previous situations in which the former owner violated the APR by conducting a prohibited activity. In that case, the Town had the ability to secure a court order requiring the owner to cease and desist from the prohibited conduct. Although an argument can be made that the property owner is in violation of the APR by doing nothing, in my opinion, it is unlikely that a court would issue an order mandating that the property owner commence certain activities on the property. Moreover, it is not clear that the property owner is not in compliance with the APR at this juncture. The property owner is actively pursuing a plan that will result in the property being returned to active agricultural use. Under such a circumstance, in my opinion, it is reasonable to conclude that the owner's activities in this regard satisfy the requirements of the APR.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

Gregg J. Corbo

Kopelman and Paige is now KP | LAW

Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
gcorbo@k-plaw.com
www.k-plaw.com

From: Jodi Ross [mailto:jross@westfordma.gov]
Sent: Wednesday, August 10, 2016 2:27 PM
To: Gregg J. Corbo; Chris Kluchman; Andrea Peraner-Sweet
Cc: Kelly Ross
Subject: Re: Fwd: Last Night's Questions on 66 Boston Road

Hi Gregg,

There was another question too last night...can Ebi install a chain fence across the parking lot entrance of his property and add no trespassing signs? The residents seemed concerned with the safety of the public and he asked if he can do this.

Thank you.
Jodi

Jodi Ross
Town Manager
Town of Westford
55 Main Street
Westford, MA 01886
978-692-5501
FAX 978-399-2557

Jodi Ross on Wednesday, August 10, 2016 at 11:42 AM -0400 wrote:
Hi Gregg, The selectmen asked the following questions at last night's BoS meeting. Please review and answer. Thanks so much.

Jodi

Jodi Ross
Town Manager
Town of Westford
55 Main Street
Westford, MA 01886
978-692-5501
FAX 978-399-2557

----- Original Message -----

Message Wed, Aug 10, 2016 11:31 AM
From: Kelly Ross
To: Jodi Ross
Subject: Last Night's Questions on 66 Boston Road

Hi Jodi,

These are the 66 Boston Road questions for Town Counsel that I have from last night:

1) Are amendments to the APRs required to build a sidewalk?

2) Bob Jefferies thought that the state has an interest in the property that might require us to follow state requirements that we otherwise would not have to follow. Do you know what Bob was getting at?

3) Is the property owner in violation of the APRs if he doesn't start farming immediately, or is his active pursuit of the farm/restaurant plan satisfactory for now?

Kelly

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Monday, August 22, 2016 1:17 PM
To: 'Chris Kluchman'
Cc: aps@sally-fitch.com; Jodi Ross; John Giorgio
Subject: RE: Retained Right question

Dear Chris:

In response to the inquiry below, it is my opinion that the retained rights section of the APR may be amended in the manner set forth in the agreement between the Town and the property owner. I have previously opined that the Board of Selectmen has the authority to authorize an amendment to the APR. In this regard, the Board has broad discretion in authorizing the amendment in any way that it deems appropriate to achieve its goal of increasing the overall agricultural use of the property by permitting part of it to be used for restaurant purposes. In my opinion, adding the proposed restaurant use to the Retained Rights section is a reasonable way of accomplishing that goal. It is my further opinion that other sections of the APR which relate to Prohibit Uses and Uses Which Require Prior Written Approval do not apply to uses described in the Retained Rights section, including uses that may be added to that section through amendment.

Please do not hesitate to contact me if you have any questions in this regard.

Very truly yours,

Gregg J. Corbo

Kopelman and Paige is now KP | LAW

Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
gcorbo@k-plaw.com
www.k-plaw.com

From: Chris Kluchman [mailto:ckluchman@westfordma.gov]
Sent: Thursday, August 18, 2016 4:50 PM
To: Gregg J. Corbo
Cc: aps@sally-fitch.com; Jodi Ross
Subject: Fwd: Retained Right question

Gregg - Thank you for your prompt response to my last Drew Gardens Task Force (DGTF) inquiry about specific APR language related to agricultural income. Please see the question below from a member of the DGTF. TF Chair Andrea Peraner Sweet asked me to forward it to you. The TF has been looking closely at APR 3 and the "Retained Rights" section and one member suggested the questions highlighted below.

The TF next meets on Thursday 8/25/16. Please copy Andrea on your response, as I will be on vacation next week. I am available to discuss tomorrow if you have questions.

Thank you, Chris K.

Chris Kluchman, FAICP
Director of Land Use Management
Town of Westford
55 Main Street
Westford, MA 01886
ckluchman@westfordma.gov
tel. 978-692-5524

----- Original Message -----

Message Wed, Aug 17, 2016 10:16 PM
From: Bob Boonstra
To: Andrea Peraner-Sweet
Cc: Chris Kluchman
Subject: Ratained Right question

Andrea,

If you submit a question to Town Counsel RE Retained Rights, I offer the following wording for your consideration:

"Is it legally permissible and appropriate to add a new Retained Right to an APR that was not present when the APR was executed?"

"If a restaurant were added to APR 3 as a Retained Right, does that new Retained Right supercede and bypass all of the APR language in Prohibited Uses, Activities that Require Written Approval, and Approval Process for Permitted Activities?"

-- Bob

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Monday, August 29, 2016 10:31 AM
To: 'Jodi Ross'
Cc: John Giorgio
Subject: RE: question about executive sessions

Dear Jodi:

I response to your inquiry below, it is my opinion that the Drew Garden Task Force (the "Task Force") may enter executive session as long as one of the stated purposes set forth in G.L. c. 30A, s. 21 are met. On or about July 12, 2016, the Board of Selectmen issued a charge to the Task Force to provide it with a recommendation concerning the Board's negotiation of an agreement to amend an Agricultural Preservation Restriction on a parcel of land in Town that would allow the property owner to build a restaurant and function hall on a portion of the subject property. Among the matters to be addressed by the Task Force is an economic evaluation of the agricultural use of the property and whether the Town should exercise its right of first refusal and purchase the property.

In my opinion, the Task Force is a public body subject to the Open Meeting Law. As such, the Task Force may enter executive session, provided that one of the purposes set forth in G.L. c. 30A, s. 21 are met and the procedural requirements of the statute are followed. One of the permissible purposes for entering executive session is to "consider the purchase, exchange, lease or value or real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body." G.L. c. 30A, s. 21A(6). The Attorney General's Division of Open Government has interpreted this provision as allowing a public body of the Town to enter executive session if its discussion will have an impact on the negotiating position of another Town board or officer. See, Attorney General Open Meeting Law Determination, OML2016-5 (Planning Board did not violate Open Meeting Law by entering executive session to discuss issues relating to Board of Selectmen's negotiation of lease and PILOT agreement); Attorney General Open Meeting Law Determination, OML2013-110 (City Council did not violate Open Meeting Law by entering executive session to discuss real estate negotiations being conducted by the Mayor). In this regard, if the advice and recommendations of the Task Force will affect the Town's negotiating position, it is my opinion that the Task Force may meet in executive session pursuant to purpose 6.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

Gregg J. Corbo

Kopelman and Paige is now KP | LAW

Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
gcorbo@k-plaw.com
www.k-plaw.com

From: Jodi Ross [mailto:jross@westfordma.gov]
Sent: Wednesday, August 24, 2016 10:04 AM
To: Gregg J. Corbo
Subject: question about executive sessions

Hi Gregg,

At last night's Board of Selectmen meeting, the question was asked if the Drew Gardens Task Force, who have been appointed by the Selectmen, has the authority to enter executive session for the purpose #6 in MGL, Chapter 31A, S21(a) (to consider the value of real property) to provide the Board guidance on the agreement with Ebi Masalehdan for 66 Boston Road.

Thank you,

Jodi

Jodi Ross
Town Manager
Town of Westford
55 Main Street
Westford, MA 01886
978-692-5501
FAX 978-399-2557

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Wednesday, August 31, 2016 1:45 PM
To: 'Chris Kluchman'
Cc: Jodi Ross; aps@sally-fitch.com; John Giorgio
Subject: RE: Questions from Drew Gardens Task Force

Dear Chris: my responses to the Task Force questions are set forth below.

Kopelman and Paige is now KP | LAW

Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
gcorbo@k-plaw.com
www.k-plaw.com

From: Chris Kluchman [mailto:ckluchman@westfordma.gov]
Sent: Tuesday, August 30, 2016 10:48 AM
To: Gregg J. Corbo
Cc: Jodi Ross; aps@sally-fitch.com
Subject: Questions from Drew Gardens Task Force
Importance: High

Gregg - Drew Gardens Task Force chair Andrea Peraner Sweet has the following questions following the TF 8/25/16 meeting last week:

1) Can a Limited Liability Corporation (LLC) be considered equal to "individual owner(s)" that is referenced in section III.D.(3) a) of APRs 2 and 3? Does the language elsewhere in APR 1, 2 and 3 referring to the Grantors and their "heirs, devisees, legal representatives, successors and assigns" supercede such reference?

Answer: Because the APRs constitute a contract between the Town and the property owner, ordinary rules of contract interpretation apply. Thus, although the words used in the APRs should be interpreted

according to their plain meaning, "the literal interpretation of any word or phrase may be qualified by the context in which it appears, by the general purpose manifested by the entire contract and by the circumstances existing at the time the contract was executed." Dickson v. Riverside Iron Works, 6 Mass.App.Ct. 53, 55 (1973). The contract should be interpreted as a rational business instrument so as to carryout the intention of the parties, and the obligations of a party should not be delineated by isolating certain words and interpreting them so narrowly that they defeat the object sought to be accomplished. Starr v. Fordham, 420 Mass. 178, 190 (1995).

In this regard, although the APRs seem to refer to the grantor as a natural person in certain places, there is nothing in any of the APRs which would prohibit transfer to a Limited Liability Company ("LLC") or some other form of legal entity. In fact, all three right of first refusal documents contain the following language acknowledging that the property may be transferred to an entity or corporation: "This Right of First Refusal to Purchase Real Estate shall survive any and all transfers, pursuant to this paragraph, and shall be binding on any and all transferees, pursuant to this paragraph, including but not limited to the Grantor's heirs and any successor individuals, entities or corporations." (emphasis added). Therefore, where the property has been transferred to an LLC, it is my opinion that the LLC stands in the shoes of the original owner and should be considered the "individual owner" for purposes of the APRs.

2) Please elaborate on your opinions in the August 22, 2016 email about retained rights so the TF might better understand your conclusions.

Answer: I have previously opined that the amendment to APR 3 to allow use of a portion of the property for a restaurant/function hall could go in the "Retained Rights" section of the APR document. As this is a matter in which the Board of Selectmen has considerable discretion, it is my opinion that the Board may insert the amendment in any way that allows the document to continue function as a rational business instrument. According to the "Retained Rights" section of APR 3, "the Grantor(s) herby reserve to and for themselves and their heirs, devises, legal representatives, successors and assigns, the customary rights and privileges of ownership not inconsistent with the statement of purpose herein". That section then lists a number of activities that are allowed to take place at the property, preceded by the words "including but not limited to". The phrase "including but not limited to" generally means that the listed categories are not exhaustive but are for illustrative purposes only. Blais v. Hartford Fire Insurance Co., 2011 U.S.Dist.LEXIS 34675 (D.Mass. 2011). In the circumstances presented to the Board of Selectmen, an amendment of APR 3 to allow a restaurant/function hall use in connection with farming activity on the remainder of the property is consistent with the overall purpose of the three APRs which is to ensure that the property as a whole remains in agricultural use. Therefore, because the proposed use in this context is not inconsistent with the purposes of the APRs, it is my opinion that such use can be added as an example of a retained customary right and privilege of ownership of the property.

3) APR 3, section III.D.3.a) refers to approvals that might be given by the BOS "to a farmer(s) actively engaged in full-time commercial farming." If there is a contract farmer employed by the owner, would they meet this qualification? Would an owner of a farm to table restaurant meet this qualification?

Answer: As previously discussed with respect to question 1, the language of the APR should not be interpreted so literally that it defeats the purpose and intent of the agreement as a whole, or any particular provisions thereof. It appears that the overall purpose of section III.D.3 is to describe the circumstances in which the Board of Selectmen may allow non-agricultural uses of the property, and subsection (a) specifies

that the approval must be given "to a farmer(s) actively engaged in full-time commercial farming". As the overall purpose of the three APRs is to ensure that the property remains in agricultural use, in my opinion, this subsection was inserted to prevent any non-agricultural uses of the property that are so invasive that the remainder of the property cannot be used for agricultural uses. In other words, permission to engage in a non-agricultural use on the property may be allowed, as long as someone is actively engaged in full-time commercial farming on the remainder of the property. That appears to be the case with respect to the proposal currently under consideration. In fact, the Board of Selectmen has determined that allowing the restaurant/function hall use on part of the property will actually facilitate the remainder of the property being returned to active agricultural use. Therefore, in my opinion, assuming that all of the other requirements of section III.D.3 can be met, permission may be granted for a non-agricultural use even if the remainder of the property is farmed by a contract farmer. It is also my opinion that the form of ownership of the restaurant is irrelevant for this purpose, as long as some portion of the property remains actively engaged in full-time commercial farming.

4) APR 3 does not appear to address what might happen if there were a catastrophe/fire or demolition of the existing farmstand. In your opinion, could the existing farmstand building be replaced under APR 3 and if so, by what process?

Answer: As previously discussed with respect to question 1, the language of the APR should be interpreted rationally so as to effectuate the intent of the parties. With regard to APR 3, it appears that the parties intended for the property owner to be permitted to continue to use the property for farmstand purposes. In my opinion, it would be consistent with the APR if the property owner were to rebuild the farmstand after it was destroyed by fire or other catastrophe. In my further opinion, if the property owner were to rebuild in the same footprint as the original building, the owner would not need any approvals other than those customarily required of any other property owner seeking to rebuild a building destroyed by fire or other catastrophe. If, however, the owner sought to build a larger building after such an event, in my opinion, the Board of Selectmen would have to approve the expansion in accordance with sections III.C and III.D.

5) The APR references that it is "in perpetuity". Can you confirm that this is allowed (are there time limits to restrictions?)

Answer: Pursuant to M.G.L. c. 184, s. 31, all "agricultural preservation restrictions shall be in perpetuity except as released under the provisions of section thirty-two." In my opinion, this means that the APRs will not expire and they will continue to attach to the land unless and until the Town votes to release its rights in accordance with the statutory procedure set forth in M.G.L. c. 184, s. 32.

Andrea - please elaborate if I've misstated any of these questions since I was not in attendance at the 8/25 TF meeting.

Gregg- your answers by close of business on 8/31 are appreciated if you are able.

Thanks, Chris

Chris Kluchman, FAICP
Director of Land Use Management
Town of Westford
55 Main Street
Westford, MA 01886
ckluchman@westfordma.gov
tel. 978-692-5524

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Monday, October 03, 2016 3:57 PM
To: 'Jodi Ross'
Cc: John Giorgio
Subject: RE: question from Econ Dev Committee

Jodi,

You have requested an opinion concerning possible placement on the ballot of a question concerning the potential revision of the Drew Farm agricultural preservation restrictions ("APR") relative to the restaurant/function room project. In my opinion, there is no mechanism in state law to include a binding question on an election ballot for such purposes. In my further opinion, however, a non-binding question could be included on an annual election ballot pursuant to the provisions of G.L. c.53, §18A. I have discussed these issues in further detail, below.

As background, access to the ballot is conditioned upon compliance with strict statutory and/or local rules set forth in the general laws, municipal home rule charter or special act. It is familiar territory that candidates must collect a certain number of signatures and meet certain filing deadlines in order for their name to be placed on the ballot. Less obvious, however, is that similarly rigid rules apply to placement of questions on the ballot. Thus, while it is common for a city or town council or town meeting to vote on a question to get a "sense of the meeting," all questions placed before the voters at an election, whether binding or non-binding, must be specifically authorized by statute, charter, or special act. See, e.g., G.L. c.43B, §11 (placement of charter adoption, revision, or amendment on ballot); G.L. c.41, §1B (authorizing a ballot question to change certain positions from elected to appointed); G.L. c.44B, §3 (authorizing placement on the ballot of question to approve the Community Preservation Act); G.L. c.54, §58A (authorizing placement on the ballot of a question to accept the provisions of a special act where the act provides for local acceptance and doesn't include the form of the question); G.L. c.53, §18A (authorizing placement on a regular election ballot of a non-binding question). There is no general law providing a municipality with the authority to place a binding question on an election ballot concerning APRs.

However, be advised that pursuant to G.L. c.53, §18A, non-binding questions of public opinion, including a question about the APR, can be placed on an annual election ballot at least 35 days prior to the date of the election in one of three ways – by petition; by vote of the Board of Selectmen; or by vote of an Annual Town Meeting. The petition process is somewhat complicated, and requires that a petition be submitted by at least 10 registered voters no later than 90 days prior to the date of the election. If the Board of Selectmen does not act on the same by the 90th day prior to the date of the election, then the petitioners must, no later than 42 days prior to the date of the election, file with the Board of Registrars, a petition signed by no less than 10% of the voters of the Town. The Board of Registrars then has seven days to certify the signatures thereon. If the petition has been signed by the requisite number of voters, the petition would appear on the ballot at the next regular election occurring at least 35 days thereafter.

In contrast, subject to the limitation that the Board must vote no later than 35 days before the date of the election and give notice to the Clerk, the Board of Selectmen may vote at any time to include a non-binding question on the ballot. Finally, an Annual Town Meeting may vote, under an article for such purposes, to place a non-binding question on the next Annual Town Election ballot.

However, as indicated above, any question placed on the ballot under G.L. c.53, §18A would be non-binding in nature, similar to articles voted at Town Meeting over which Town Meeting has no authority but for which it is determined that it would be useful for any number of reasons to get a "sense of the meeting".

Please let me know if there are further questions on this issue.

Very truly yours,

Gregg J. Corbo

Kopelman and Paige is now KP | LAW
Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
gcorbo@k-plaw.com
www.k-plaw.com

From: Jodi Ross [mailto:jross@westfordma.gov]
Sent: Monday, September 26, 2016 11:04 AM
To: Gregg J. Corbo
Subject: question from Econ Dev Committee

Hi Gregg,

The Economic Development Committee asked me if the question of whether to change the APR for the restaurant/function room project, could go to a local ballot question. Please advise.

Thanks
jodi

Jodi Ross
Town Manager
Town of Westford
55 Main Street
Westford, MA 01886
978-692-5501
FAX 978-399-2557

Gregg J. Corbo

From: Gregg J. Corbo
Sent: Tuesday, February 28, 2017 8:48 AM
To: 'Jodi Ross'; John Giorgio
Subject: RE: Fwd(2): Emily Teller @ BoS Meeting Feb 14
Attachments: WSFD-Drew Farm APR Amend_20160613132704.pdf

Dear Jodi:

With regard to the questions presented below, please refer to my written correspondence dated June 13, 2016, in which I opined that the proposed amendment to one of the APRs for 66 Boston Road would not constitute a release or disposition of the Town's interest in the land. A copy of that opinion is attached hereto for your convenience. For that reason, it is my further opinion that the proposed amendment does not require procurement in accordance with Chapter 30B of the Massachusetts General Laws. As I have previously explained, although an APR is considered an interest in land, in my opinion, the proposed amendment does not dispose of such an interest. Rather, the proposed amendment will clarify the existing APR by stating that a certain activity is allowed as of right. If the amendment is approved, the Town will retain all of its rights under the original APR, including the right of first refusal and the right to enforce the restriction. It is, therefore, my opinion, that the proposed amendment does not constitute the disposition of an interest in real property that would require compliance with Chapter 30B.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

Gregg J. Corbo, Esq.
KP | LAW
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
gcorbo@k-plaw.com
www.k-plaw.com

From: Jodi Ross [mailto:jross@westfordma.gov]
Sent: Monday, February 27, 2017 6:04 PM
To: John Giorgio; Gregg J. Corbo
Subject: Fwd(2): Emily Teller @ BoS Meeting Feb 14
Importance: High

This is on the agenda again tomorrow night and Andrea is asking if you answered...please respond by tomorrow early afternoon at latest.

thanks
Jodi

Jodi Ross
Town Manager
Town of Westford
55 Main Street
Westford, MA 01886
978-692-5501
FAX 978-399-2557

----- Original Message -----

Message Wed, Feb 08, 2017 3:17 PM
From: Jodi Ross
Emily Teller <eteller@earthlink.net>
Emily Teller <eteller@earthlink.net>
To: John Giorgio
Subject: Fwd: Emily Teller @ BoS Meeting Feb 14
Attachments: Attach0.html Uploaded File 55K 1997 Drew Parcel Notice of contract to P&S real estate 2 pa.PDF Uploaded File 198K
2016-01-12 Agreement Ebi Masalehdan BoS 20%.pdf Uploaded File 385K
2017-01-23 FIRST AMENDMENT TO 20% AGREEMENT.pdf Uploaded File 237K
2015 Town Mtg 30B conveyance of property authorization page.pdf Uploaded File 528K

Jodi Ross
Town Manager
Town of Westford
55 Main Street
Westford, MA 01886
978-692-5501
FAX 978-399-2557

----- Original Message -----

Message Wed, Feb 08, 2017 7:24 AM
From: Emily Teller <eteller@earthlink.net>
Emily Teller <eteller@earthlink.net>
To: Jodi Ross gregjohnson@westfordma.gov
Cc: mgreen@westfordma.gov
Subject: Emily Teller @ BoS Meeting Feb 14
Attachments: Attach0.html Uploaded File 55K 1997 Drew Parcel Notice of contract to P&S real estate 2 pa.PDF Uploaded File 198K 2016-01-12 Agreement Ebi Masalehdan BoS 20%.pdf Uploaded File 385K 2017-01-23 FIRST AMENDMENT TO 20% AGREEMENT.pdf Uploaded File 237K 2015 Town Mtg 30B conveyance of property authorization page.pdf Uploaded File 528K

Jodi and Greg,

Thank you both for talking with me yesterday. Here is my letter about why I'd like to speak during the Drew Property discussion of the BoS on Tuesday, Feb. 14.

I have attached to this email the 4 documents* that I have in electronic versions. I will try to come to Town Hall and email the others to Greg from one of the Town Hall copier/scanners during the day tomorrow (hopefully before noon).

Thank you for this opportunity.
Emily

Dear Members of the Board of Selectmen and Jodi Ross,

I understand that the Drew Parcel will be discussed at the Board's meeting on February 14. I would like to have some input into that discussion. I will be present at the meeting, and here is some background.

As you know, I was one of the six members of the original (January - October1996) Board of Selectmen-appointed Drew Farms Negotiating Committee. We worked with the Bohnes to acquire three things for the Town of Westford (approved by the 1996 Special Town Meeting) related to "certain real property consisting of two parcels totaling 8.97 acres located on Boston Road":

1. "the development rights to,
2. an agricultural preservation restriction on,
3. and an option to purchase agricultural rights" to these parcels.

I would especially like to bring to your attention the wording of the two related article at the 1996 Special Town Meeting:

(Article 32): It was voted unanimously that the Town will vote to declare: certain real property, consisting of two parcels totaling 8.97 acres located on Boston Road known as Drew Farms and including a farm stand and an apple orchard, to be of unique value to the Town because of its qualities and location; and that advertising pursuant to Mass. General Laws Ch. 30B will not benefit the town.

(Article 33): It was voted that the Town authorize the board of Selectmen to enter into a lease of a parcel of town-owned land located on the south side of Boston Road in the vicinity of and across from the present Drew Farm stand and store, consisting of between 1 and 2 acres of land, containing an apple orchard; and further that the Board of Selectmen shall determine the value of said lease and if required shall issue a Request for Proposals from parties interested pursuant to Mass. Gen. Laws c.30B.

I did not remember until recently that the STM votes mentioned M.G.L. Ch. 30B.

There has been, and still remains, at least 2 questions in the minds of more than a few citizens of the Town of Westford that I am representing by my communication with you in this letter and also on February 24.

The questions are:

1. Is there is a specific process with particular actions by the Board of Selectmen on behalf of our Town that is mandated by Massachusetts General Law, Chapter 30B (or any other M.G.L.) regarding the interest in real estate that is currently OWNED/OVERSEEN by the Town of Westford that pertains to the Drew parcels (on the north side of Boston Road only) ? Is the Town, by the actions of the Board of Selectmen, abandoning the development rights and/or relinquishing the Agricultural

Preservation Restriction(s) which was/were to continuity in perpetuity on this northern Boston Road land of approximately 8.97 acres?

I would like these questions answered at one of your regular meetings prior to our March 25th Annual Town Meeting and ALSO have the answers/information presented to the voters at our March Annual Town Meeting before there is any discussion of warrant articles related to 66-68 Boston Road (Articles 18 and 19).

I wrote to the Board of Selectmen three years ago in January of 2014, when the first "For Sale" sign was posted on the farm stand at 66-68 Boston Road, that I did not know who would be the overseer for the future of this land/business. I wrote then to make them/you aware of the advertised sale and also to express my hope, on behalf of the intent of the Drew Farms Negotiation Committee which acted in the best interests of the Town, that the Town of Westford, through the Board of Selectmen, would continue to communicate to the seller (Mr. Goddard) its retention of the development rights, and – through your participation – would be a partner, or at least a participant – in this potential sale transaction, in order to preserve that sense of Westford's past (and, then, present) for the future.

I am still very interested in the Board of Selectmen's responsibility and stewardship on behalf of the residents of Westford with regard to this property, and hope you will answer the questions I raise by this letter and, as I will be present on February 14, will ask again in person.

Thank you very much for your renewed consideration of this matter.

Most Sincerely,

Emily Teller

cc: Mike Green, Chair of Planning Board, as I also cc:ed Mr. Green in January 2014

Enclosures: Texts: M.G.L. Chapter 30B Section 16 Real Property Disposition or Acquisition
M.G.L. Chapter 40L Section 5 Sale of land or Conversion to Other Use
M.G.L. Chapter 184 Section 31 Restrictions DefinedDREW FARMS
*Agreement dated January 1, 2016 between the Westford Board of Selectmen and Mr. Masalehdan
*Amended Agreement dated January 23, 2017 between the Westford Board of Selectmen and Mr.Masalehdan
*2015 Town Meeting Article 27 - Conveyance of Property via MGL Ch 30B
*Notice of Contract to Purchase and Sell Interests in Real Estate
Keith and Nanci Bohne to the Town of Westford, May14, 1997
NEGOTIATION COMMITTEE Report from 1996 Westford Town Report
Photocopies of Articles 13, 23, 27, 32, and 33 from Westford Special Town Meeting October 1996
Photocopy of Article 12 from Westford Annual Town Meeting May 1997

KP | LAW
The Leader in Public Sector Law

101 Arch Street, Boston, MA 02110
Tel: 617.556.0007 | Fax: 617.654.1735
www.k-plaw.com

Gregg J. Corbo
gcorbo@k-plaw.com

March 10, 2017

Hon. Andrea Peraner-Sweet and
Members of the Board of Selectmen
Westford Town Hall
55 Main Street
Westford, MA 01886

Re: Drew Farm APR Amendment
Town Meeting Quantum of Vote

Dear Members of the Board of Selectmen:

I am writing to follow-up on my June 13, 2016 opinion concerning the procedures for amending one of the Agricultural Preservation Restrictions ("APR") held by the Town on the above-referenced property, and more specifically, to address questions concerning the Town Meeting quantum of vote needed to authorize such an amendment. More specifically, I have previously opined that, to the extent that Town Meeting approval is needed to authorize the Board of Selectmen to amend an APR, such approval may be by simple majority vote. Certain opponents of the project, however, have since obtained an opinion that a two-thirds vote is required pursuant to G.L. c. 40, §15A because the amendment will result in "the change in use of a portion of the protected land." See, September 13, 2016 Correspondence from Douglas A. Muir, Esq. to William and Marian Harmon.

In my opinion, G.L. c. 40A, §15A does not apply to an amendment of an APR, and, to the extent that Town Meeting approval is required to authorize such a transaction,[1] it is my opinion that the approval may be by simple majority vote. G.L. c. 40A, §15A, provides, in relevant part, as follows:

> Whenever a board or officer having charge of land . . . constituting a whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose . . . such board or officer shall forthwith give notice of such determination to the . . . board of selectmen of the town. At any time after the receipt of such notice . . . the town by a two-thirds vote may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose . . . .

In this matter, at the Special Town Meeting held on October 21, 1996, the Town voted to authorize the Board of Selectmen "to acquire over the period of three fiscal years the development rights to an agricultural preservation restriction on, and an option to purchase agricultural rights in certain real property consisting of two parcels totaling 8.97 acres located on Boston Road known as Drew Farms."

[1] Please be advised that, for the detailed reasons set forth in my June 13, 2016 opinion, I remain of the opinion that the proposed amendment to the APR does not constitute a disposition of the Town's interest in land and that any Town Meeting vote on the subject is merely advisory.

There is currently a proposal to amend the general conditions in one of these APRs to allow a use incidental to the other agricultural uses of the property. It is my understanding that, notwithstanding the proposed amendment, the Town will retain all of its rights under the three APRs, including the right to require that the property be used for agricultural use and its right of first refusal. In fact, it is my understanding that the proposed amendment is specifically conditioned on the owner restoring the land to active agricultural use.

In my opinion, the Town Meeting vote of October 21, 1996, authorized the Board of Selectmen to acquire an interest in the subject property for the purpose of controlling the development of the property, for ensuring that the property as a whole is used for agricultural purposes and for exercising a right of first refusal. This purpose does not change as a result of the proposed amendment, as the Town will retain all of these rights. Because the purpose for which the property is held by the Town will not change as a result of the proposed amendment, it is my opinion that G.L. c. 40A, §15A does not apply, and that any Town Meeting vote taken on the subject may be by simple majority.

Please refer to my correspondence of June 13, 2016 for a more detailed explanation of the law as it applies to the proposed APR amendment, as well as the other opinions I have provided on the subject, and if you have any additional questions, please do not hesitate to contact me.

Very truly yours,

Gregg J. Corbo

GJC/lem