

VIA ELECTRONIC MAIL

M E M O R A N D U M

To

From

Re Questions for Town Counsel Related to Town Owned Parcels – Town of Wayland, Massachusetts

Date March __, 2017

In reviewing documents related to parcels owned by the Town of Wayland, we discovered various deeds and transfer documents, such as orders for taking, include varying language likely intended to restrict properties for certain uses. We are requesting assistance in determining what impact the restrictions may have in terms of how each parcel or parcels may be used on an ongoing basis. Below you will find a handful of pointed questions. Back up documents related to those questions are included here as Exhibits. As you will note, some of the questions relate to more broad-based language occurring in multiple documents, while others relate to specific locations where we have come across specific concerns. If there is any additional information we can provide to better inform on the concerns addressed please do not hesitate to reach out.

1. **Conveyance Under M.G.L. c. 40, s. 8C** – property was deeded to the Town of Wayland under the provisions of the referenced statute “...to be managed and controlled by the Conservation Commission of said Town for the promotion and development of the natural resources and for the protection of the watershed resources of said Town.” Is it an ongoing restriction in perpetuity that the property must be controlled by the Conservation Commission for the stated purpose? (**See Exhibit A** for Quitclaim Deed granting property to the Town of Wayland)

2. **Specific Taking Language** – a Tax Taking was accomplished through an Order of the Board of Selectman of the Town of Wayland, which recorded Order includes language that the taking was “...in the name of and on behalf of the Town, for a refuse disposal area or dump...”. Similar language is used in a separate Order of Taking by the Board of Selectman of the Town of Wayland including “...for Town dump purposes...”. Is it an ongoing restriction in perpetuity that the property must be used for the stated purpose? (**See Exhibit B** for recorded Board of Selectman Orders)

3. **Land Granted for a Generic Purpose** – property was deeded to the Town of Wayland without restriction in the Deed. During the Town meeting a vote was taken that included the property being used “for highway and related purposes.” In terms of determining the applicable use, which document would control? Is it a matter of timing? While the attached Exhibit shows one example, there are several in the Town which include similar language such as “for highway use”, “for municipal use” or “for recreational use”. If there are differences in the way each use would be evaluated we would also be interested to know. (**See Exhibit C** for Deed and record of Town meeting vote)

4. **Wayland Housing Authority Land** – in an instance where land is conveyed to the Wayland Housing Authority, would that land be considered Town-owned land as the Wayland Housing Authority is owned by a federal agency?

5. **Language Going Forward** – as you will see, the language regarding takings and land granted for certain purposes has run the gamut over the years. We would be welcome to some direction related to suggested language in these circumstances on how we can acquire properties with enough flexibility to anticipate the unanticipated needs of the Town.

6. **Old Town Landfill South Side of Route 20** – Two separate parcels taken by eminent domain by order of the Board of Selectmen:

1) Assessors Parcel 22-001 = 10.65 acres (Bk. 8428/Pg. 389) on 2/21/1955 “for a refuse disposal area or dump” (as authorized by ATM 3/10/1954, Art. 16 “for purposes of a refuse disposal area, sometimes referred to as a dump”); and

2) Assessors Parcel 22-002 = 5.9 acres (Bk. 11816/Pg. 625) on 3/30/70 (as authorized by STM 11/19/1969) “for Town dump purposes”.

While the facility was operational, it was under the control of the Board of Road Commissioners (who were merged into the Board of Public Works in 2010). The landfill on those parcels was closed in 1980.

QUESTION: Which town entity has control of the parcels and, subject to DEP approval, can that land be put to another use?

7. **Loker Conservation & Recreation Area** – Three separate parcels:

1) **396 Commonwealth Road** -- Assessors Parcel 48-098 = 2.6 acres (Bk. 10146 / Page 490 – 10/15/1962; Plan 1471 (A of 2) - 1962). Lot A was conveyed “in trust” -- Town of Wayland is named the Trustee; the “Conservation Commission shall manage and control the property conveyed to this charitable trust and shall constitute a Board of visitors to enforce and preserve this trust”; “property shall be used only for the purposes authorized by General Laws Chapter 40 Section 8C, as it may hereafter be amended, and other Massachusetts statutes relating

to conservation, including the protection and development of the natural resources and protection of the watershed resources of the Town of Wayland”; “property may not be used for any commercial or business purpose nor for the removal, whether for sale or the use of the Town of Wayland, of sand, gravel, stone, oil, gas or any other mineral or earth product”.

QUESTIONS: Which town entity has control of the parcel and can that land ever be put to another use? In a more general vein, if after referencing Chapter 40, Section 8C, the language did not include the words “as it may hereafter be amended” would that make a difference as to another possible future use?

2) 412 Commonwealth Road --_Assessors Parcel 49-064B = 28.20 acres

- Deed: (Bk.31387/ Pg.167) – Sale 5/2/2000 for \$1.7M, Recorded 5/9/2000 [as authorized by ATM 5/11/98, Art. 28] for Lot 2 (described in Registration Bk. 688/Pg. 169, Certificate 111719 & Plan 18387C; and Lots B & C see Plan 1471 (A of 2) – 1962).

All of the “premises are conveyed with the limitation that the premises be used only for recreation and conservation”; subject to the restriction that the parcels “shall not be used for the sale, lease, rental or use as a single family, multi-family, or other type of temporary or permanent residence”.

- Eminent Domain Taking: (Bk. 31387/Pg. 158; Land Court 138908) – Date of Taking 5/4/2000, Recorded 5/9/2000 [as authorized by ATM 5/11/98 ATM Art. 28] appears to be for the same parcel as deeded above.

“for conservation and recreation purposes” in accordance with “the provisions of Chapter 40, Sections 8C and 14 of the Massachusetts General Laws, as amended” of Lot B = 2.1 acres & Lot C = 21.5 acres [see Plan 1471 (A of 2) – 1962] & Lot 2 supposedly Registered Land on a Pan 18387C which is not available at the Registry on-line; covenant for the Town and those in its chain that “the parcels shall not be used for the sale, lease, rental or use as a single family, multi-family, or other type of temporary or permanent residence”; Order of taking shall not extinguish Grantor Dow’s 2/8/1999 contractual obligations, etc.

QUESTIONS: Which town entity has control of the parcel and can that land ever be put to a use other than recreation or conservation? Does the eminent domain document supersede the language in the deed? Does the reference in the eminent domain taking to “Chapter 40, Sections 8C and 14 of the Massachusetts General Laws, as amended” impose any restrictions on the property with regard to construction of a building or other structure? Could a community center be constructed on the property?

3) 434 Commonwealth Road, Natick = 3.71 additional acres in Natick

Deed: (Bk. 31387/Pg. 177) – Sale 5/2/2000 for less than \$100 paid; Recorded 5/9/2000 [as authorized by STM 12/3/98 Art. 19] – Lot D on Plan 1471 (A of 2) - 1962

Premises are conveyed with “the limitation that the premises be used only for recreation and conservation purposes”; subject to the restriction that the parcels “shall not be used for the sale, lease, rental or use as a single family, multi-family, or other type of temporary or permanent residence”

Taking?: Taking authorized by ATM 5/3/2001 Art. 30 but can’t find record at Registry on-line.

QUESTIONS: Which town entity has control of the parcel and can that land ever be put to a use other than recreation or conservation? Can Wayland use the property in Natick for Town of Wayland municipal purposes? Subject to Town of Natick zoning, can the Town of Wayland construct a building or other structure on the land in Natick?

4) Subsequent Town Meeting Action re: Loker Conservation & Recreation Area

There was a subsequent action applicable to all three parcels at ATM 5/12/2004 Art. 32 “Delineation of Loker Conservation/Recreation Area” (Bk. 53508/ Pg. 112) – Board of Selectmen were instructed to transfer the care, custody, management and control of 4/1/2004 plan-delineated areas (including the land in Natick) to each the Conservation Commission for conservation purposes & the Recreation Commission for recreation purposes, respectively, and the plan delineating those areas for conservation and those areas for recreation is recorded at the Registry.

QUESTION: Considering the responses to the foregoing questions, what is the effect of the Town Meeting vote?

8. **Town Building & Lands – 41 Cochituate Road** – multiple parcels (Assessors Parcel 23-001 = 37 acres; and probably 23-001A = .48 acres & 23-002 = 2.72 acres):

For factual background and deed references see:

a) 10/15/1969 legal memo from then Town Counsel C. Peter R. Gossels, Esq. and his 5/16/2014 letter concerning same, as well as Compiled Plan of Land 1/12/1967 at http://www.wayland.ma.us/Pages/WaylandMA_BComm/WRAP/TownBldgMap1967.pdf ;

b) Wayland Zoning Board Decision 78-9 granting a special permit and site plan approval for a proposed change in use of the building to town offices and school administration;

c) Town Meeting (ATM 2001, Art. 33) voted to sell to Paul Langner & Barbara Buell a portion of Parcel 4 along the entrance way (from Cochituate Road) to the Town Building

accomplished via 2002 deed (Bk. 35147/Pg. 247) which says for Town's title see Bk. 4425/Pgs. 306-308;

d) Town Meeting (ATM 2002, Art. 6) voted to transfer a strip of land from Parcels 2 & 6 to Mass Highway for roadway widening, authorized the Recreation Commission to transfer the land to the Selectmen for that purpose, and authorized the Selectmen to petition the Massachusetts legislature to allow the change in use of the land from parkland, and the Massachusetts legislature did adopt Special Act 198 of 2002 allowing the transaction to proceed;

e) In 2013, the Wastewater Management District Commission sought and received approval from the MA DEP to install a groundwater discharge system on what appears to be Parcels 4 & 5 whereby treated wastewater from the wastewater treatment plant (located adjacent to the Wayland Commons Condominium project) would be piped to a location on Parcel A just south of the Trinitarian Church; however, no Town Meeting approvals have been sought for either use of the land or for funding engineering or construction.

QUESTIONS: Are there restrictions on what each parcel can be used for? What is required in order to remove the restrictions? Who has control of each of these parcels? What is required in order to effect a change in the controlling entity? Can the existing building remain? Can the existing Town Building be repurposed for another Town use and can it be sold/leased for private use? Can the existing building be added on to? What actions must/can the town undertake to correct any legal insufficiencies? What of the prospective location for a groundwater discharge system?

9. **Greenways/Paine Estate** – “Municipal Use” Parcel C

202 Old Connecticut Path -- Assessors Parcel 33-001C = 26.4 acres (Bk. 25560/Pg. 210 – 8/10/1995 as authorized by ATM 1994, Art. 10):

Grant from Paine Trust to Town of Wayland with: a) reservation of, among other things, a 25 ft. wide buffer zone parallel to the westerly sideline of the 25' Access Easement for the benefit of Parcels M, N, P that “shall be kept in its natural condition free of all structures, pavement and parking areas”; and b) restriction that a 100 ft. wide strip along entire sideline and Old Connecticut Path be kept in its “natural condition, free from above ground structures” it having been “conveyed for conservation purposes” [however it can be used for access roads, driveways, and trails].

QUESTIONS: What is the Town's obligation to enforce the buffer zone? It appears that the owner(s) of Parcel M and/or N have cleared vegetation, placed pavement, and created a parking area in the buffer zone. With regard to the 100 ft. wide strip along Old Connecticut Path, is the language of the deed sufficient to assure the restriction in perpetuity or does the Town need to take other action?