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May 16, 2014

The Selectmen of the
Town of Wayland
41 Cochituate Road
Wayland, Massachusetts 01778

Mr. Chairman and Members of the Board of Selectmen,

When I heard about recent proposals to sell the Town Building and the land on which it stands, I was reminded of the letter that I wrote to Paul F. Alphen, Chairman of the Junior High School Alternate Building Use Committee on October 15, 1969, while I was serving as Wayland's Town Counsel. A copy of my letter is annexed.

In that lengthy letter, I offered my opinion as to the Town's title to the eight parcels of land now occupied by Wayland's Town Building as of October 15, 1969. You will note that I called Mr. Alphen's attention to restrictions that were imposed on the Town's title to some of those parcels and made recommendations as to how the Town might deal with those restrictions in the event that it shall decide to sell all or part of that property.

Accordingly, I recommend that the Town update the title study that I conducted 45 years ago before the Town shall consider the sale of the Town Building site or any part thereof.

Sincerely,

C. Peter R. Gossels

CPRG/cal
cc: Wayland Planning Board
Alf Berry, Town Surveyor

October 15, 1969

Paul F. Alphen, Chairman
Junior High School Alternate Building
Use Committee
24 Morrill Drive
Wayland, Massachusetts 01778

Re: Potential Alternate Uses of Wayland
Junior High School Building

~~Dear Paul:~~

Before responding, in detail, to the questions raised by your letter of August 20, 1969, let us first refer to Lew Bowker's plan entitled "Compiled Plan of Town Owned Land in Wayland, Mass. January 12, 1967 Scale I" = 100' Wayland Engineering Department" for a more particular description of the parcels of land which, together, comprise the site upon which the Junior High School building is located:

> Parcels 1 and 1A were deeded to the Town in the nineteenth century by warranty deed without restrictions and have been used at all times for school purposes under the care and control of the School Committee.
>
> Parcel 2 was purchased by the Town for "playground purposes" by deed recorded on July 21, 1920 and is presumably now under the care and control of the Park, Recreation and Cemetery Department.
>
> Parcel 3 was given to the Town by deed of John Wight recorded on April 5, 1921 "upon the express condition that the premises shall forever be used as a public park or playground or as portions of the public park or playground systems of said Town of Wayland, upon any breach of which said premises shall revert to the grantor and his heirs."

Parcel 4 was given to the Town by Edmund H. Sears and Edwin Farnham Greene, trustees under a declaration of trust dated July 17, 1911, by deed recorded on April 5, 1921," to be held by said Town of Wayland upon the trusts set forth in said declaration ...," to wit: "for purposes of recreation and for a public playground by residents of the Town of Wayland, and particularly by children ..."

Parcel 5 was given to the Town by deed of Edmund H. Sears and Sophia W. Sears, his wife, in her own right, and Edwin Farnham Greene recorded on April 5, 1921 "to be held by the Town of Wayland upon the trusts set forth under a Declaration of Trust dated July 17, 1911 ..."

Parcel 6 was given to the Town by deed of Edmund H. Sears and Sophia W. Sears, in her own right recorded on September 19, 1923 "upon and subject to the express condition that the premises shall be used as a public park or playground or as portions of the public park or playground systems of said Town of Wayland and that if hereafter the premises ... are not used for the aforesaid purposes said premises shall revert to said Sophia W. Sears or her heirs or assigns."

Parcels 7 and 8 were acquired by the Town for park purposes by Order of Taking duly adopted by the Board of Park Commissioners and recorded on June 6, 1952.

With the exception of Parcel 10, which was conveyed to the Pequot Lodge in 1896, and a small portion of Parcel 4, which is designated Parcel 9 and was sold to Trinitarian Congregational Church of Wayland pursuant to vote of the Town and Chapter 170 of the Acts of 1960, all said parcels acquired as hereinabove described still stand in the name of the Town of Wayland. The use of said parcels is, however, subject to the terms and conditions of all deeds and trusts accepted by the Town and the provisions of the General Laws of the Commonwealth. Insofar as the

actual building site is concerned, the Town was purportedly authorized to use those portions of Parcels 4 and 5 more particularly described by Chapter 49 of the Acts of 1934, Chapter 314 of the Acts of 1948 and Chapter 23 of the Acts of 1952 "for school yard purposes ... under the same care and control as other school property."

The legal principles defining the power of a town to use, lease and or dispose of town property are set forth in the General Laws and have been interpreted by the Supreme Judicial Court in a number of leading cases including: Lowell v. City of Boston, 322 Mass. 709, 79 N.E. 2d713 (1948), Higginson v. Slattery, 212 Mass. 583, 99 N.E.2d 529 (1912), and more recently in City of Salem v. Attorney General, 344 Mass. 626, 183 N.E.2d 859 (1962). See also M.G.L.A. chapter 40, section 3.

Although a town may generally lease, sell, or otherwise dispose of property no longer needed for public purposes where it acquired the same by purchase or by eminent domain, its power to do so may be limited where a piece of land has been dedicated and or maintained as a public park which has been defined as "a tract of land ... to which the public at large may resort to for recreation, air and light." See City of Salem v. Attorney General, supra. Such dedication and use has been held to create an easement in the general public which only the General Court may "limit, suspend or terminate." Lowell v. City of Boston, supra.

Where, however, land has been acquired "subject to the terms of any gift, devise, grant, bequest or other trust or condition," it may not be sold or appropriated to another inconsistent use." See M.G.L.A. chapter 214, section 3 (11) and Hardy, Municipal Law, section 7.

These limitations must, of course, be read together. Thus, if the Town accepted a gift of a parcel of property in trust for "purposes of recreation and for a public playground," even an act of the General Court authorizing an inconsistent use of the parcel will not protect the Town from an action under M.G.L.A. chapter 214, section 3 (11) "to enforce the purpose ... of any gift or conveyance which shall have been made to and accepted by any ... town ... for a specific purpose ... in trust or otherwise ..."

Fortunately for the Town, Edmund H. Sears and Edwin Farnham Greene, who together with Sophia W. Sears gave Parcels 4 and 5 to the Town "for purposes of recreation and for a public playground by residents of the Town of Wayland and particularly by children," were wise enough to provide in their Declaration of Trust that the Town of Wayland:

> "may sell and convey said real estate in case it should ever become advisable to do so, provided that a sufficient sum can be obtained from such sale to purchase other real estate to be used for the purposes of the trust which is as well adapted to the purpose and equally convenient, and in case of such sale the proceeds shall be at once used to purchase such other real estate which shall be held upon the same trusts as that sold, and the balance of the purchase price, if any, shall be set apart as a separate fund and the income shall be used to pay expenses connected with the trust."

Said Declaration further provides that a deed signed by such person or persons as may be duly authorized to sell the real estate "by two-thirds of those voting at a town meeting duly called and held" and "setting forth that such sale is deemed advisable by them shall be conclusive evidence, as far as relates to the purchaser at such sale, of the authority of the Town to make such conveyance."

Unfortunately, the terms of the aforesaid trust do not authorize the Town to lease or appropriate any portion of Parcels 4 and 5 to a use inconsistent with the purposes enumerated nor does it permit the Town to sell anything less than the entire tract without the approval of "a Court having jurisdiction to accomplish the general purposes herein set forth as nearly as may be" on pain of reversion to the heirs of Edmund H. Sears and Edwin Farnham Greene.

Although the failure of Sears and Greene heirs to comply with the provisions of M. G. L. A. Chapter 260, Section 31A now prevents them from initiating any proceeding based upon any right of entry for condition broken or possibility of reverter, the remedy set forth in M. G. L. A. Chapter 214, Section 3 (11) makes it necessary that the following preliminaries be complied with if the Town wishes to lease any or all of the land shown as Parcels 4 and 5 (the site of the Junior High School building):

a. A decree of the Middlesex Probate Court authorizing such lease must be secured;

b. The General Court must enact legislation authorizing such lease;

c. The Town must, by a two-thirds vote, amend the Zoning

By-Laws and Map to permit the use of the premises for other than school or park purposes;

d. The Town, must, by a two-thirds vote, approve such lease;

e. The Town must, by a two-thirds vote, transfer the care and and control of such property from the School and or Park, Recreation and Cemetary Department to the Selectmen; and

f. The Selectmen must vote to enter into a lease with a prospective tenant and execute the same by virtue of the authority thus vested in them.

In the event that the Town wishes to sell all or any portion of Parcels 4 and 5, I recommend that each of the aforesaid requirements be complied with to secure authority for such sale. Moreover, in order to satisfy the terms of the trust, the Town should, in either event, be prepared "at once to purchase such other real estate which shall be held upon the same trusts as that sold, and the balance of the purchase price, if any, shall be set apart as a separate fund and the income shall be used to pay expenses connected with the trust."

Even if the Town should desire to appropriate any portion of Parcels 4 and 5 to any use other than "for recreation and for a public playground," it would in my opinion require a court order, an act of the legislature as well as appropriate votes of the Town.

Although the Town has already, without benefit of a court order, appropriated a portion of such parcels for "school and school yard purposes" and subsequently sold Parcel 9 in the belief that the several Acts of the General Court afforded sufficient authority therefor, I recommend that action be initiated soon to secure a court order authorizing and ratifying

such use and sale pursuant to the terms of the Declaration of Trust dated July 17, 1911, especially in the light of M. G. L. A. Chapter 214, Section 3 (11).

Having thus answered your questions with respect to the major portion of the Junior High School site, let us briefly consider the remaining parcels:

Parcels 1 and 1A may be sold, leased or appropriated to another use by a two-thirds vote of the Town pursuant to the provisions of M. G. L. A. Chapter 40, Sections 3, 15 and 15A.

Parcel 2 may be dealt with in a similar manner except that an act of the General Court must first be secured since this parcel may be held to have been dedicated and or maintained as a public park as the same has been defined in the Lowell case cited above.

Parcels 3 and 6 will no longer revert to the heirs of the donors because of their failure to comply with M. G. L. A. Chapter 260, Section 31A, but if the Town should contemplate the use of any or all of said parcels for any purpose other than a park or playground, an act of the General Court must first be secured.

Parcels 7 and 8, having been taken for park purposes, may be appropriated to another use only if the procedure recommended for Parcel 2 is complied with.

Should you have any other questions with regard to this or any other matter, please feel free to get in touch with me.

Sincerely,

C. Peter R. Gossels

CPRG: klg