

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

Message Tue, Jun 14, 2016 12:04 PM
From: "Gregg J. Corbo" <GCorbo@k-plaw.com>
To: Jodi Ross
Cc: John Giorgio <JGiorgio@k-plaw.com>
Subject: RE: APR questions
Attachments: Attach0.html Uploaded File 33K

Hi Jodi. My answers to these questions are set forth below.

Gregg J. Corbo, Esq.
Kopelman and Paige, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110
O: (617) 556 0007
F: (617) 654 1735
[<mailto:gcorbo@k-plaw.com>]gcorbo@k-plaw.com
[<http://www.k-plaw.com/>]www.k-plaw.com

This message and the documents attached to it, if any, are intended only for the use of the addressee and may contain information that is PRIVILEGED and CONFIDENTIAL and/or may contain ATTORNEY WORK PRODUCT. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. If you have received this communication in error, please delete all electronic copies of this message and attachments thereto, if any, and destroy any hard copies you may have created and notify me immediately.

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

Message Fri, May 27, 2016 3:59 PM

From: "Siriani, Donald (SEN)" <mailto:Donald.Siriani@masenate.gov>
]Donald.Siriani@masenate.gov>

To: Jodi Ross

Cc: "Siriani, Donald (SEN)" <mailto:Donald.Siriani@masenate.gov>
]Donald.Siriani@masenate.gov>

Subject: APR questions

Attachments: Attach0.html Uploaded File 13K

Jodi,

At the last Board meeting there was a motion adopted to seek guidance from Town Council regarding the process required to release an APR restriction. The motion was along these lines-

Motion: to instruct the town council to prepare a document advising the board on pertinent town by-laws, state agency policies, state laws, Commonwealth of Massachusetts regulations, or Articles of the Constitution, as well as the terms of APR 3 which the board must adhere to regarding the process to release, in whole or in part, a restriction or right the town holds for Agricultural Preservation Restriction #3 on agricultural property located on Boston Road.

Answer: Please refer to my correspondence of June 13, 2016 in which I discuss applicable laws concerning the procedure for amendment of an Agricultural Preservation Restriction.

I was asked to send some other questions that I have at this time. I noted that there are many questions and I would share some initial ones with you to convey to Council.

Are these APR parcels subject to Article 97? If so, what is the process that must be adhered to in order to release a restriction, in whole or in part?

Answer: Please refer to my correspondence of June 13, 2016 in which I explain the basis for my opinion that the proposed APR amendment is not subject to Article 97.

Can the APR, which was certified by the Commissioner of Food and Agriculture in 1999 as having "been approved in the public interest", and granted to the Commonwealth and the Town of Westford, be amended such that rights are conveyed without also being subject to further review or approval by the Commissioner?

Answer: As explained in my correspondence of June 13, 2016, 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.

If so, can the inclusion of non-agricultural functions be added to an APR retained rights section if it would create a right or privilege which is inconsistent with an APR's statement of purpose section?

Answer: Please refer to my correspondence of June 13, 2016 concerning my opinion as to the scope of the Board of Selectmen's discretion to amend the APRs. By way of further explanation, pursuant to

M.G.L. c. 40, s. 3, the Board of Selectmen may make such orders as it may deem necessary or expedient for the use of the Town's property. Thus, when Town Meeting voted to acquire the Agricultural Preservation Restrictions on the subject property, it left negotiation of the specific terms to be decided by the Board in its discretion. In this regard, it is my understanding that the Board has determined that the proposed amendment to APR 3 will further the public interest and is generally consistent with the purpose of the three APRs, insofar as the amendment will ensure that the property as a whole is returned to active agricultural use, after years of neglect and decay. While reasonable minds may differ in this respect, it is my opinion that the Board's decision to grant the amendment is reasonable under the circumstances.

If an APR includes language declaring that the restriction, in whole or in part, may only be released by the procedures established in c 184 s 32 and "otherwise by Article 97 of the Constitution" might that require a two thirds vote of the General Court prior to such a release?

Answer: Please refer to my correspondence of June 13, 2016 in which I explain the basis for my opinion that the proposed APR amendment is not "release" that is subject to M.G.L. c. 184, s. 32 and/or Article 97.

Did Westford seek guidance from the Department of Agriculture prior to entering into agreements to amend conditions of an APR? If so, what guidance did the town receive?

Answer: As explained in my correspondence of June 13, 2016, 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.

If Westford Gateway, LLC is the owner of the parcels of land at 66 -68 Boston Road can the person or people who have a controlling interest of the LLC transfer or convey in some manner the majority interest of that LLC or some future transfer of its assets without the a signed purchase and sales agreement of the parcels subject to the APRs?

Answer: 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. Although 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, in my opinion, the Board of Selectmen, in its discretion, can negotiate a clarification of this provision in any amendment of the APR. Please be advised, however, that a transfer of interests in an LLC is not as straight forward as an outright sale of the property and such a requirement may be difficult to administer in practice. 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. Although such an arrangement may be difficult to administer, I believe that we can craft terms that will satisfy the Board's concerns and I will be happy to work with you on this at the appropriate time.

Also, we need input on what MGLs do apply when a town meeting is voting to dispose land not held for general purposes which is subject to an APR.

Answer: Please refer to my correspondence of June 13, 2016 in which I explain the basis for my opinion concerning Town Meeting's role with respect to the proposed amendment.

Thank you.

Don

Don Siriani

Legislative & Communications Director
Office of Senator Bruce E. Tarr
Senate Minority Leader
State House, Room 308
Boston, MA 02133
617-722-1600 (Office)
978-761-0472 (Mobile)
617-722-1310 (Fax)

[<https://www.facebook.com/pages/State-Senator-Bruce-Tarr/154666387521>][Image] [<https://twitter.com/SenBruceTarr>][Image] [<https://www.youtube.com/channel/UCq6-e64TUpUDW5PEfByDUzQ>][Image] [<http://www.tarrtalk.com/>]TarrTalk.com

All email messages and attached content sent from and to this email account are public records unless qualified as an exemption under the [<http://www.sec.state.ma.us/pre/preidx.htm>]Massachusetts Public Records Law.