

GARRITY, LEVIN AND MUIR LLP  
COUNSELLORS AT LAW

uploaded  
9/23/16

DMUIR@LAWGLM.COM  
DIRECT DIAL: 617-236-5011

PLEASE SEND  
CORRESPONDENCE TO THE  
BOSTON OFFICE

September 13, 2016

William and Marian Harman  
10 Chamberlain Road  
Westford, MA 01886

RECEIVED  
SEP 16 2016  
PERMITTING

Dear Mr. and Mrs. Harman:

You have asked for our opinion with respect to certain aspects of a current proposal under consideration by the Westford Board of Selectmen to "amend" one of the Agricultural Preservation Restrictions on the so-called "Drew Gardens" property on Boston Road to allow for construction of a restaurant-function hall business with parking and associated infrastructure and, specifically, what legal requirements, besides approval by the Selectmen, must be satisfied for the restaurant proposal to be legally permitted under the terms of the applicable APR and G.L. c. 184, Sections 31-33.

In considering the matter, we have reviewed the APR document, applicable statutory provisions and a June 13, 2016 letter of Attorney Gregg Corbo of Kopelman and Paige, P.C. addressed to the Board of Selectmen.

Among other things, we note that the APR document does not address amendment of the APR or a process by which amendment might be undertaken. While the owner retains certain non-agricultural rights in the property; e.g., use of trails and wood roads, installation and maintenance of utilities, and while certain activities (generally agricultural related) may be permitted with the approval of the holder of the restriction, none of these activities remotely approach the construction of restaurant-functional hall business. The APR document clearly provides that no activity can be permitted which is inconsistent with the intent of the restriction, which is the perpetual protection and preservation of agricultural land.

**Boston Office**  
TWO CENTER PLAZA, SUITE 530  
BOSTON, MASSACHUSETTS 02108  
617-236-5010  
FAX: 617-507-8522

**Metrowest Office**  
175 HIGHLAND AVENUE  
NEEDHAM, MASSACHUSETTS 02494  
781-449-5095  
FAX: 781-449-5014

September 13, 2016

Page 2

The term "agriculture" is defined in the APR document, which employs a definition which mirrors definitions of agriculture which appear in the Massachusetts General Laws. This definition, and indeed any commonly accepted notion of "agriculture" simply doesn't apply to a restaurant - whether or not the operator intends to serve products grown on site. A restaurant is a commercial enterprise; it is not "agriculture." Indeed, if this proposal is accepted, what would happen if the owner decides that more parking is needed, or outdoor seating, or expansion of the building to make the enterprise commercially viable? When does commercial activity exceed the bounds of a "mere amendment," in Attorney Corbo's words.

Whether or not the Town might have developed a different APR document for this property back in 1996-1999 is frankly not legally relevant. This APR simply doesn't allow for a restaurant use which so clearly flies in the face of the clear intent of the restriction. The rights of the property owner and the Town are governed by this APR document, not one that might have been developed differently 15-20 years ago.

In our opinion, the only way the restaurant proposal can be legally accommodated on the Drew Gardens site is for the portion of the site to be used for that purpose (including any associated grading or topographical changes on portions of the Drew Gardens site covered by the other APRs), to be considered "released" from the APRs. Such a release is a disposition of an interest in land and the process by which that would take place is clear - indeed it is described in Attorney Corbo's June 13 letter:

1. Since the APR interests were acquired for a particular purpose (the preservation of agricultural land), the change in use of a portion of the protected land must be approved by a two-thirds vote at Town Meeting pursuant to G.L. c. 40, Section 15A.

2. As this is a "release" of a portion of APR-protected land, it must be approved by the Massachusetts Commissioner of Agriculture, pursuant to G.L. c. 184, Section 32; and

3. As this is also a disposition of protected agricultural land by a municipality, it is governed by Article 97 of the Amendments to the Massachusetts Constitution, which requires a two thirds votes by yeas and nays of both houses of the Massachusetts Legislature.

GARRITY, LEVIN AND MUIR LLP

September 13, 2016

Page 3

We hope that the Town and landowner can find a way to restore the Drew Gardens site to active agriculture without resorting to a proposal that is so far from the purpose and intent of this APR and the Massachusetts APR program generally.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Muir".

Douglas A. Muir

cc: Tara Zadeh, General Counsel  
MA Dept. of Agricultural Resources

