



TOWN OF WESTFORD  
OFFICE OF THE ASSESSORS  
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PERMITTING

To: Jodi Ross  
From: Paul Plouffe

October 3, 2016

Decision:

The Board of Assessors met on September 23, 2016 and again on September 29, 2016 to discuss Drew Farms and its APR. On September 23<sup>rd</sup>, Atty. Paul Alphen came to the board's open meeting. There were no other interested parties present. The BOA spent about an hour asking Atty. Alphen questions about this situation. The BOA decided to meet September 29<sup>th</sup> to render its decision. On September 29<sup>th</sup>, the BOA met in an open meeting to discuss and render a decision. At this meeting, Mr. Krankewicz, an opponent, was there to input his opinion and question the BOA. The board spent approximately 2 hours with Mr. Krankewicz. In the end, the BOA decided that it did not support Town Counsel's opinion and opted to leave the assessment for FY 2017 as is under Chapter 61A. The BOA also directed the Principal Assessor to request a legal opinion from the Department of Revenue as there is no case law or guidance under the statutes.

The PROPOSED minutes of the September 29, 2016 Board of Assessors meeting is noted below:

"The BOA met to act on 66 Boston Road. Mr. Krankewicz, a concerned citizen, was present for the entire meeting. The Board heard Mr. Krankewicz's concerns and entered into discussion with him. Mr. Krankewicz cited and agreed with Town Counsel's opinion on what should qualify as being actively devoted to agriculture. Counsel's opinion cited Chapter 61A Sections 1-5. Mr. Krankewicz stated that there has been no attempted agricultural use by the current owner and because of this, the property should be assessed other than its as in APR."

"There was further discussion with Mr. Krankewicz about the sale price and the BOS's signed agreement to support a change in use of the property. Was the sale price reflective of the value of the property? Did the current owner overpay? Was he influenced by the signed agreement? These questions generated much discussion with the Board. Titus Palmer acknowledged that Mr. Krankewicz raised valid questions. However, the BOA's decision was related to valuation only. All parties agreed, that this case presented an unusual situation and in uncharted waters. There is no case law handling a situation where land in APR has fallen out of compliance, a change of ownership, and said property in deplorable condition. Not Chapter 20 governing APR, Chapter 61A sections 1-5, CMR (Code of Massachusetts Regulation) 330 Section 22 clearly and adequately address the penalties and valuation of a property in non-compliance to APR."

"The Board differed from Town Counsel's opinion. The Board interpreted Chapter 61A Section 2 as the property being used in a manner incidental to agricultural use. The owner appears to be following USDA report in restoring the property so that it can be cultivated. The Board also discussed and noted, even if the property had been purchased for the sole intent to re-establish a country store/farm stand, the land would not have been useful for farming at this time. The Board further determined that this site should be closely monitored moving forward to FY 2018."

"Titus Palmer made a motion to leave the FY 2017 assessment as is under APR and Chapter 61A value. Motion was seconded by Diane Holmes and all were in favor without further discussion. Motion carried.  
Titus Palmer also made a motion directing Paul Plouffe (Principal Assessor) to seek a legal opinion from the Department of Revenue of the valuation of the property located at 66 Boston Road citing that there is no case law, DOR legal opinion, guidance from Chapter 20 or Chapter 61A or CMR 330 Section 22 directed at the assessment and/or penalty of land not in compliance with APR."

Mr. Siriani (BOS) has 2 questions to be answered:

- 1) What would the value of the property/land be valued at if the BOS released the 2 acre site where the current store is sited and the restaurant were not built?

A: The site would be assessed as commercial property, due to its commercial use, if the restaurant is built with the land value estimated at \$650,000. If the restaurant is not built, there are 2 scenarios: 1) assess as commercial property; 2) or assess as residential because it is located in the RA residential zone. However, assessing the property is determined by its Use.

- 2) Should it be currently valued at FMV because it is not being actively devoted to agriculture as supported by Town Counsel's opinion?

A: Because there are different opinions submitted by attorneys representing each side, the BOA is requesting a legal opinion from the DOR as an impartial opinion. The BOA has decided unanimously, that it will maintain the FY2017 value as is. There is no guidance within the MGL or case law regarding this type of situation. Please refer to BOA's decision