



TOWN OF WESTFORD  
OFFICE OF THE ASSESSORS  
TOWN HALL  
55 Main Street  
WESTFORD, MA 01886  
(978) 692-5504 FAX (978) 399-2556

October 11, 2016

Kathleen Colleary, Bureau Chief  
Property Tax Bureau  
Department of Revenue  
100 Cambridge Street  
Boston, MA 02114

RECEIVED  
NOV 02 2016  
PERMITTING

Dear Ms. Colleary,

This letter is my request for a legal opinion on the correct, proper and legal assessment procedure in establishing values for land under Agricultural Protection Restriction (APR) that is temporarily not actively devoted to agricultural/horticultural use.

The subject in question consists of 2 parcels that are in APR. These properties have been in APR since 1997 and 1998 respectively. One site known as Map 22-115 consist of 6.97 acres of land only. The second site is known as Map 22-116 and consist of 2 acres with a store. These properties have been vacant for approximately 1.5-2 years prior to it being purchased February 17, 2016 for \$650,000. The current owner is seeking release from APR on 2-acre parcel (Map 22-116) to raze the store and build a restaurant/banquet facility while re-activating the second parcel's agricultural/horticultural use. His plan requires Board of Selectmen approval to change use and release that portion of land currently in APR as well as Planning Board approval. Because of this situation, since acquiring the property, the owner has not started the process of cultivating the land for its intended purposes. However, based on USDA reports, he is in the process of cleaning up the site for agricultural purposes.

The owner's proposed plan has created much controversy within the town. Opponents want the property assessed at Full Market Value (FMV). The owner and proponents of this plan differ in opinion, in that the owner is in the midst of transitioning the property to make it economically viable to continue its agricultural use and creating a profit and livelihood.

The statute governing APR, Chapter 20 Section 26 states that property in APR is to be assessed under Chapter 61A Sections 1-5, Section 10. CMR 330 Section 22 was also reviewed for clarification of APR. Neither Chapter 20 Section 26, Chapter 61A Sections 1-5 and 10, nor CMR 330 Section 22, address a case and give guidance where land in APR, is not actively devoted to agricultural/horticultural use, temporarily non-productive and therefore, in non-compliance.

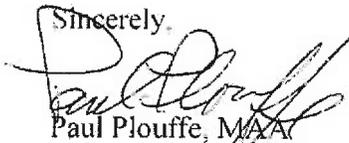
Counsel for the Town, cites that all of the sections of Chapter 61A would/should apply. Therefore, allowing the town to assess said property at FMV until such time that the proper use is re-established. The Board of Assessors disagree. They believe that Section 2 of Chapter 61A applies, in that, the prepping and cleaning of the property is incidental to agricultural use in this instance.

Opposing counsel, for the current owner, notes: 1) the owner is making attempts to resume agricultural use but must make the property viable for him economically and has been working with the town's Planning Board since he purchased the property in February 2016; 2) counsel raises issues with defining value of this property while in a state of flux since it was purchased with a permanent restriction and therefore FMV would not be applicable because it is, in fact, restricted. Attached are opinions from both counsels.

The Board of Assessors, for fiscal year 2017, have voted unanimously to leave the assessment as is with value reflected under Chapter 61A. The APR is between the Town, Board of Selectmen and the owner of said property. Unlike other APR's within the Commonwealth, the State is not a party to this agreement. The Board of Assessors, has no recorded lien on this property as would be the case if it were in fact in Chapter 61A. It is a restricted use property, where the Town purchased the development rights. There is no clear indication of what, if any, is the market value for this property.

The Board of Assessors, respectfully invoke the urgency of a quick response in this matter as it may go before Annual Town meeting.

Sincerely,



Paul Plouffe, MAA  
Principal Assessor

Enclosures:

Opinion letter from Town Counsel, Gregg Corbo, KP Law, P.C.  
Letter from Paul Alphen, Alphen & Santos, P.C., attorney for the Owner, to the Board of Assessors  
Agreement between the current owner and the Board of Selectmen prior to purchase in February 2016  
Opinion letter from the Department of Agricultural Resources  
Opinion letter from Town Counsel regarding APR Amendment  
Letter from USDA (United States Department of Agriculture)  
Letter from Paul Alphen, Alphen & Santos, P.C., attorney for the Owner dated September 12, 2016 to Task Force  
DOR Legal Opinions from 1996  
Written decision from the Board of Assessors  
Deed  
Property Record Cards for both parcels

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September 9, 2016

**Gregg J. Corbo**  
gcorbo@k-plaw.comHon. Kelly J. Ross and  
Members of the Board of Selectmen  
Westford Town Hall  
55 Main Street  
Westford, MA 01886Re: 66-68 Boston Road – Property Tax Classification

Dear Members of the Board of Selectmen:

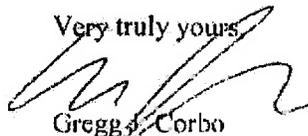
You have requested an opinion concerning the appropriate property tax classification for the property located at 66-68 Boston Road and known as Drew Farm. Specifically, it is my understanding that the property is currently assessed as agricultural land in accordance with M.G.L. c. 20, §26. The property is currently the subject of three Agricultural Preservation Restrictions held by the Town, but the property is currently vacant and the owner is not actively engaged in agricultural use. In light of the current status of the property, you have asked whether it should continue to be classified as agricultural land for property tax purposes.

Pursuant to M.G.L. c. 20, §26, land subject to an agricultural preservation restriction may be treated as agricultural land for real estate tax purposes only while the land is “actively devoted to agricultural, horticultural or agricultural use.” To determine whether the land is actively devoted to agricultural use, the Assessors apply the standards set forth in M.G.L. c. 61A, §§1-5, which require that (1) the land be used primarily and directly in raising animals or growing food, animal feed, plants, shrubs or forest products or in a manner related or necessary to their production or preparation for market; and (2) that the annual gross sales of the farm products in the regular course of business meets certain dollar thresholds based on the size of the property. According to guidance from the Department of Revenue, a property may be considered in active agricultural use if it is not generating revenue only if it is actively cultivating products for market. Activities before cultivation of the land, however, such as planning, permitting, and tree and brush removal are not considered part of the product cultivation period.

In this matter, it is my understanding that the property has been vacant for several years and that the property owner is pursuing a development plan to return it to active agricultural use. It does not appear, however, that the land is actively being used for agricultural or horticultural purposes or that it is generating any revenue from activities related to such purposes. Therefore, in my opinion, the property in its current state does not qualify for classification as agricultural land for property tax purposes, and it cannot be so classified until the land is returned to active agricultural use as described in M.G.L. c. 61A, §§1-5.

Please do not hesitate to contact me if you have any questions in this regard.

Very truly yours,

  
Gregg J. CorboGJC/lem  
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# ALPHEN & SANTOS, P.C.

ATTORNEYS AND COUNSELORS AT LAW

200 LITTLETON ROAD, WESTFORD, MA 01886

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[www.alphensantos.com](http://www.alphensantos.com)

SEP 16 2016

Paul F. Alphen, Esquire  
Maria L. Santos, Esquire

Sandra M. Meneses, Esquire

September 15, 2016

Westford Board of Assessors  
55 Main Street  
Westford, MA 01886

RE: 66-68 Boston Road

Dear Paul and Members of the Board:

We represent Westford Gateway, LLC, the owner of 66-68 Boston Road, shown on Assessors Map 22 as Parcels 115 and 116. It has come to our attention that a concerned citizen has asked the Board of Assessors to review the tax status of our client's property.

Please keep in mind the following facts:

1. The property is restricted pursuant to three (3) "Agricultural Preservation Restrictions"; the first of which was recorded in 1997 at Middlesex North District Registry of Deeds at Book 8569, Page 242; the second was recorded in 1998 at Book 9155, Page 190; and the third was recorded in 1999 at Book 10124, Page 169. The restrictions are specific and limit the use of the property to certain agricultural uses and the maintenance of the existing farmstand-country store building and the continuation of the use thereof as of 1999. The Town also has a right of first refusal within the restriction documents. For those reasons alone, the property cannot be taxed as other residential or commercial land in town.
2. The former owner placed the property on the market, and in 2015 the Selectmen referred the potential exercise of the right of first refusal to the Drew Gardens Task Force. Based upon the recommendations of the Task Force, in January 2016 the Board of Selectmen decided NOT to exercise the right of first refusal and entered into an agreement with Ebi Masalehdan wherein if he purchased the property by April 2, 2016, the Board of Selectmen would support a Town Meeting Warrant Article to amend the 1999 restriction to allow the use of the third parcel for a restaurant and function hall as an alternative to the farmstand-country store. A copy of the agreement is enclosed.

3. Our client took title to the property on February 17, 2016. A copy of the deed is enclosed. From January through the April 2, 2016 Town Meeting our client engaged engineers, architects and other specialists to prepare plans as required by the agreement with the Board of Selectmen in preparation for Town Meeting. Our client also retained counsel to review, revise and discuss potential changes to the proposed amendment the restriction. Our client and the consultants met with municipal boards to discuss the proposal in preparation for Town Meeting. Town Meeting defeated the proposal by 5 votes. Most of the records regarding the various plans, correspondence, deliberations and minutes of the Task Force can be found at:

[http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA\\_drew/docs/](http://www.westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA_drew/docs/)

4. Since that time, our client and its consultants have been meeting regularly with the Board of Selectmen and the Drew Gardens Task Force (which has been meeting weekly since July). The Board and the Task Force have held numerous public discussions regarding the proposal and have sought a variety of opinions from Town Counsel and others. Our client has modified the plans a few times and has reduced the size of the proposed building, and has proposed further clarifications regarding the proposed use and revised agreements with the Board of Selectmen. Our client submitted a proposal regarding its commitment toward using the property for providing a significant portion of the food served at the restaurant, and a commitment to support local farmers. A copy of the letter is enclosed.

*— what is their opinion?*

5. The Task Force has heard from farmers and other experts in agriculture regarding the viability (or lack of viability) of using the property exclusively for agricultural purposes.

6. Our client obtained a USDA report on the soil conditions of the property, dated August 22, 2016. A copy is enclosed.

7. An Article appears on the proposed Warrant for the October Special Town Meeting to ask the Town Meeting to make alternative amendments to the restriction on the third parcel. Most recently, the Selectmen voted on September 15<sup>th</sup> to seek second opinions regarding the proposal to amend the restriction.

8. Our client has reported to the Board of Selectmen the significant efforts it undertook to clean up the property since the time of its purchase.

In summary, all parties have been working tirelessly toward the goal of the potential for action at the October Special Town Meeting. At present, it seems doubtful that the Task Force and the Board of Selectmen will be in a position to make a final recommendation by October 17, and it may be necessary to push action off until the Spring Town Meeting. Our client has modified the plans a few times to address concerns raised at the many meetings, our client has submitted additional correspondence and documentation to address other concerns raised at the many meetings, and the Selectmen continue to seek additional legal opinions regarding the overall proposal. At the time of this writing, no conclusions have been made. Our client cleaned up the site, obtained a soil analysis, and continues to address many of the issues raised by the boards. Yesterday the Board of Selectmen voted to establish another subcommittee to negotiate the terms of a revised agreement with our client.

We appreciate that there is a group of people that are strongly opposed to Mr. Masalehdan's vision and one of the opponents of record has asked the Board of Assessors to tax the property at a greater value. But, not only is the property restricted to use for agricultural purposes, in the past 7 months since our client purchased the property, our client has actively devoted more time, money and energy in activities related to the productive agricultural use of the land than the prior owner had in years.

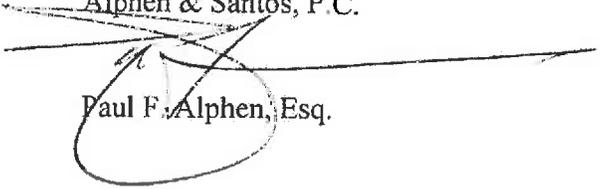
The exact language of Chapter 20, Section 6 reads:

"Land under agricultural preservation restrictions, while actively devoted to agricultural, horticultural or agricultural and horticultural use as defined in sections 1 to 5, inclusive, of chapter 61A, shall be assessed for general property tax purposes at values no greater than those determined by the methods and provisions of section 10 of said chapter 61A." Mass. Gen. Laws Ann. ch. 20, § 26 (West)

If the Board of Assessors is inclined to consider the possibility that the restrictions on the land, combined with the considerable and concerted effort engaged by our client to work with the Town of Westford on creating a mutually agreeable and financially feasible long term plan to restore, use and farm the property does not support the continued tax classification of the property, we respectfully request the opportunity to meet with the Board and discuss what other steps our client is required by law to complete in order to maintain the classification.

Thank you for your attention to this matter.

Very truly yours,  
Alphen & Santos, P.C.



Paul F. Alphen, Esq.

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## AGREEMENT

This Agreement is entered into as of 1/12, 2016, by and between the Town of Westford, by and through its Board of Selectmen, a municipal corporation with a business address of 55 Main Street, Westford, Massachusetts (hereinafter referred to as the "Town"), and Ebrahim Masalehdan, an individual with an address of 31 Progress Avenue, Tyngsboro, Massachusetts (hereinafter referred to as the "Buyer").

## RECITALS

WHEREAS, the Town is the holder of three Agricultural Preservation Restrictions (hereinafter referred to as "APR 1", "APR 2" and "APR 3" and collectively referred to as the "APRs") on two contiguous parcels of land in the Town of Westford, which are collectively known as 66-68 Boston Road, Westford, Massachusetts (hereinafter referred to as the "Property");

WHEREAS, APR 1 and APR 2 generally prohibit the use of the land for non-agricultural purposes, and APR 3 generally prohibits the use of the land for non-agricultural purposes and generally allows for continued use of an existing "country store" building;

WHEREAS, the APRs include a right-of-first refusal, which allows the TOWN to purchase the properties in accordance with the terms of any bona fide offer received by the current owner;

WHEREAS, the parcels have been allowed to lie fallow for several years, and the "country store" building is vacant and in disrepair, such that they have become a blight on the surrounding neighborhood;

WHEREAS, the Buyer has made a bona fide offer to purchase the two parcels, and has submitted a development plan to reestablish the agricultural use of the land covered by APR 1 and APR 2 through the installation and maintenance of a high tensile orchard, cherry trees, a greenhouse, and row crops;

WHEREAS, the Buyer's ability to maintain his proposed agricultural uses is dependent upon his ability to use APR 3 for a farm-to-table restaurant and function room with related parking, which necessitates the removal of the "country store" structures; and

WHEREAS, the Town recognizes that the viability of the two parcels for sustained agricultural use is limited due to their small size, topography and location, and that allowing the use of one of the APR areas for the purposes described herein will have a positive effect on the public good and will yield a substantial benefit to the agricultural resources of the Town.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## AGREEMENT

1. Within five (5) business days of execution of this Agreement, the Town will inform the current owner, in writing with copy to the Buyer, that it will waive its right of first refusal under the APRs.
2. Upon receipt of written notice of the Town's waiver of its right of first refusal, the Buyer will purchase the Property in accordance with the terms of the Purchase and Sale Agreement dated October 30, 2015 and will close on the transaction prior to April 2, 2016.

3. Buyer agrees that it will pursue development of the Property so as to reestablish the agricultural use of the land covered by APR 1 and APR 2 through the installation and maintenance of a high tensile orchard, cherry trees, a greenhouse, and row crops, and, on the land covered by APR 3, a farm-to-table restaurant and function room with related parking, as shown on the conceptual plan attached hereto as "Exhibit A" and hereinafter referred to as the "Project".
4. Upon execution of this Agreement, the Buyer will begin working to finalize the plans for the Project and to obtain the licenses, permits and approvals necessary to complete the Project. On or before March 25, 2016, the Buyer shall provide the Board of Selectmen with construction documents that are near complete.
5. The Board of Selectmen will place an article on the Warrant for the April 2, 2016 Annual Town Meeting for authorization to amend APR 3 to allow the construction and operation of an up to 16,500 square foot farm to table restaurant and function room with related parking and utilities, said amendment to be substantially in the form attached hereto as "Exhibit B", provided, however, that the Board will have no obligation to put the article to a vote by Town Meeting unless the Buyer has purchased the Property and recorded a deed in his name or the name of an entity owned and/or controlled by him, and has provided the Town with the construction documents described above.
6. If Town Meeting authorizes the amendment, the Buyer will complete the Project in accordance with the construction documents described above. All work in connection with the Project shall be at the Buyer's sole cost and expense and the Buyer assumes all risk of liability and loss in connection therewith. The Town shall bear no liability or expense in connection with the Project or on account thereof.
7. The Buyer acknowledges and agrees that the Board of Selectmen shall have no obligation to execute and record the amendment to APR 3 unless and until Town Meeting approves the amendment and all licenses, permits and approvals for the Project have been obtained by the Buyer and construction on the Project is ready to proceed.
8. As consideration for the amendment to APR 3, the Buyer will pay the Town the sum of \$50,000, payable in three annual installments of \$16,666.67, with the first installment due and payable on the second anniversary of the issuance of a certificate of occupancy by the Building Inspector. The Buyer also agrees that it will build sidewalks along Boston Road for the length of Property, in accordance with specifications and a schedule to be provided by the Town at a later date.
9. If Town Meeting does not approve the amendment to APR 3, or if the Buyer fails to secure all licenses, permits and approvals needed to complete the Project, or if the Buyer abandons the Project, or if the Project is not completed for any reason, the Buyer acknowledges and agrees that it will own the Property subject to the existing APRs and that it will use diligent efforts to comply with the terms of the APRs by developing active agricultural uses on the Property.
10. The Buyer acknowledges and agrees that certain discretionary permits, licenses and approvals will be required to complete the Project and that nothing herein shall be deemed to waive the Buyer's obligations to apply for and comply with all such permits, approvals and conditions governing the Project, and the Town does not hereby promise or guarantee that any such permits, licenses or approvals will be granted. The Buyer further acknowledges and agrees that, to the extent that it is required to obtain such licenses, permits and approvals from Town officials, boards and/or committees, that the Buyer shall receive no preferential treatment as a result of this Agreement and that it shall be treated in the same manner as any other property owner in the Town.

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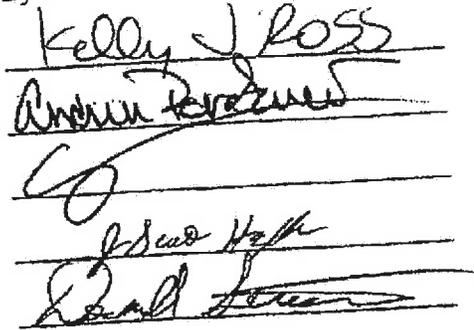
11. The Buyer acknowledges and agrees that it has inspected the Property and is familiar with the conditions thereof, and the Town is making no representations or warranties, express or implied, as to the suitability of the Property for the Project and that the Buyer is proceeding with the Project at his own risk.
12. The provisions, terms and conditions of this Agreement, may not be modified except in writing, duly executed by both parties.
13. If any portion of this Agreement is declared to be illegal, unenforceable or void, then all parties to this Agreement shall be relieved of all obligations under that portion; provided, however, that the remainder of this Agreement shall be enforced to the fullest extent permitted by law.
14. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this Agreement shall be brought in courts within the Commonwealth of Massachusetts.

This Agreement is to take effect as a sealed instrument, this 12 day of January, 2016.

EBRAHIM MASALEHDAN



TOWN OF WESTFORD  
By its Board of Selectmen





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THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

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CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

MATTHEW A. BEATON  
Secretary

JOHN LEBEAUX  
Commissioner

September 22, 2016

VIA EMAIL:  
kross@westfordma.gov

Town of Westford  
Board of Selectmen  
Kelly Ross, Chair  
Town Hall  
55 Main Street  
Westford, MA 01886

RECEIVED  
SEP 23 2016  
PERMITTING

Re: Westford Private APR

Dear Mr. Ross,

The Massachusetts Department of Agricultural Resources ("Department") has received a number of calls from concerned citizens as well as specific questions from the Town of Westford's ("Town" or "Westford") Director of Land Use Management concerning a proposed alteration to an agricultural preservation restriction ("APR") referred to as APR3.<sup>1</sup> Specifically, it has been reported to the Department that there is a proposal that would allow for the construction of a 14,000 square foot building (containing a restaurant and banquet facility) and an associated parking lot for 136 cars on APR3.

Prior to approving proposed APRs, the Department reviews the terms of the document to ensure that the enumerated purposes, and restrictions on the use of the property, meet the statutory requirements and the intent of the legislation: to permanently protect the use of the property for commercial agricultural uses. In order for the Department to approve an agricultural preservation

<sup>1</sup> In April of 1999, the Department approved an APR to be held by the Town by and through its Board of Selectmen, on an approximately three acre tract of land on Boston Road in the Town of Westford. The APR was recorded in Book 10124, Page 169 at the Middlesex Registry of Deeds ("APR3"). The approval was made in response to a request to the Department pursuant to M.G.L. Chapter 184, Section 32. Without the Department's approval of APR3, purchased by the Town for \$175,000.00, the recorded restriction would not be a statutorily recognized APR and therefore would not be afforded the permanent protection and benefits that such an approval creates.

restriction, among other prerequisites, it must meet the definition set forth in M.G.L. c 184 Section 31 which states, in part:

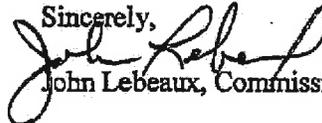
“An agricultural preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land appropriate to retaining land or water areas predominately in their agricultural farming or forest use, to forbid or limit any or all (a) construction or placing of buildings except for those used for agricultural purposes...”.

The language of APR3 proposed and approved by the Department perpetually protects and preserves agricultural lands, maintains land in active agricultural use, forbids the construction or placement of buildings except those for agricultural purposes, prohibits the use of the land for non-agricultural uses, and terminates development rights. The Department approved APR3 as these terms, and the stated purpose of the APR, met the statutory definition of an agricultural preservation restriction pursuant to M.G.L. c 184, Section 31.

The proposal before the Town, to convert almost the entire three acres of land restricted by APR3 into a restaurant and banquet facility, with an associated parking lot, contravenes the statutory language and is prohibited by the terms of the Department approved APR3 as it is not an agricultural use. Such a significant change to the allowed use of the restricted property, in clear contradiction to the intent and purpose of the restriction, is tantamount to an unauthorized release of the entire restriction. The change in allowed use would invalidate the restriction and yet the Town is not pursuing the release procedures found in M.G.L. c 184, Section 31 and Article 97 of the Massachusetts Constitution.

With regard to proposed amendments to other agricultural preservation restrictions held by the Town and approved by the Department, please submit any proposed amendments for Department review. Each proposed amendment must be reviewed by the Department on a case by case basis.

MDAR requests that the Board of Selectmen carefully review this matter prior to taking any action and we are available to discuss this matter at your convenience. Thank you for your consideration of this important matter.

Sincerely,  
  
John Lebeaux, Commissioner

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**KOPELMAN AND PAIGE, P.C.**  
*The Leader in Public Sector Law*

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June 13, 2016

Hon. Kelly Ross and  
Members of Board of Selectmen  
Westford Town Hall  
55 Main Street  
Westford, MA 01886

RECEIVED  
JUN 15 2016  
OFFICE OF TOWN MANAGER

Gregg J. Corbo  
gcorbo@k-plaw.com

Re: Drew Farm APR Amendment

Dear Members of the Board of Selectmen:

I am writing in response to your request for clarification regarding the process for amending an Agricultural Preservation Restriction ("APR") that the Town holds on two adjoining parcels of land located at 66 Boston Road and known as "Drew Farm" (the "Property"). Specifically, you would like to know: (1) whether a decision to amend an Agricultural Preservation Restriction requires a two-thirds vote of Town Meeting; (2) whether the decision to amend an Agricultural Preservation Restriction requires approval of the Massachusetts Legislature in accordance with Article 97 of the Massachusetts Constitution; and (3) whether the decision to amend the Agricultural Preservation Restriction requires approval of the Department of Agriculture.

Whether the Selectmen need the approval of a two-thirds Town Meeting vote and/or the approval of the State Legislature under Article 97 depends, in my opinion, on whether the proposed change to the APR constitutes a release of the Town's interest in the APR or whether it is a mere amendment to that interest. Although this is an issue in which the statutes and case law do not offer clear guidance, it is my opinion that the Selectmen's considerable discretion in establishing the terms of the APR, when combined with the rights retained by the Town after the proposed amendment, reasonably supports the conclusion that the change under consideration will result in an amendment of the APR that does not require a two-thirds vote of Town Meeting or the State Legislature.

Background

By way of background, at the Special Town Meeting held on October 21, 1996, the Town voted to authorize the Board of Selectmen "to acquire over the period of three fiscal years the development rights to an agricultural preservation restriction on, and an option to purchase agricultural rights in certain real property consisting of two parcels totaling 8.97 acres located on Boston Road known as Drew Farms . . . The remaining terms to be negotiated by the Board of Selectmen." (emphasis supplied). In accordance with this Town Meeting vote, over the course of the next three fiscal years, the Board acquired three related APRs on the Property for which it paid cash consideration of \$125,000 each (separately referred to herein as "APR 1", "APR 2" and "APR 3"). APR 1 and APR 2 generally prohibit the use of the Property for non-agricultural purposes, and APR 3 generally prohibits the use of the Property for non-agricultural purposes and generally allows for continued use of an existing "country store" building. Included in each of the three APRs is a right of first refusal for the benefit of the Town

**KOPELMAN AND PAIGE, P.C.**

Hon. Kelly Ross and  
Members of Board of Selectmen

June 10, 2016

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should the Property be offered for sale. Each of the three APRs was approved by the Commissioner of Food and Agriculture, but no State funds were used in connection with the purchase.

Since the Town's acquisition of the APRs, the Property has been allowed to lie fallow for several years, and the "country store" building is vacant and in disrepair, such that they have become a blight on the surrounding neighborhood. In 2015, Town officials were approached by a potential purchaser who submitted a development plan to reestablish the agricultural use of the Property through the installation and maintenance of a high tensile orchard, cherry trees, a greenhouse, and row crops. The buyer's ability to maintain these proposed agricultural uses, however, is dependent upon the ability to use a portion of the Property for a farm-to-table restaurant and function room with related parking, which necessitates the removal of the "country store" structures. In light of this proposal and in consultation with Town officials and the Drew Farm Task Force, the Board of Selectmen found that the viability of the two parcels for sustained agricultural use is limited due to their small size, topography and location, and that allowing the use of one of the APR areas for restaurant and function hall purposes would have a positive effect on the public good and yield a substantial benefit to the agricultural resources of the Town.

As a result of its support of the project, the Board voted not to exercise its right of first refusal, and the buyer purchased the property subject to the existing three APRs. In conjunction with the Board's decision not to exercise the right of first refusal, the Board and the buyer entered into an agreement to amend APR 3 to allow the construction and operation of an up to 16,500 square foot building with related parking and utilities, to be used for restaurant and banquet hall purposes. Any exercise of rights under the proposed amendment are expressly contingent upon the two contiguous parcels being actively engaged in agricultural use, and the Town expressly retains its right of first refusal. The agreement to amend APR 3 was made contingent upon approval of the amendment by Town Meeting. When the question was presented at the Annual Town Meeting on April 2, 2016, the question failed to obtain a majority vote in favor. It is my understanding, however, that the buyer has approached the Board of Selectmen with a revised proposal to reduce the size of the building being proposed.

Town Meeting Quantum of Vote

Pursuant to M.G.L. c. 184, §32, an APR is considered an interest in land, and the statute states that "the restriction may be released, in whole or in part, by the holder for consideration, if any, as the holder may determine, in the same manner as the holder may dispose of land or other interests in Land . . ." (emphasis supplied). The statute does not define the term "release," and I am not aware of any case law interpreting the statute in a context similar to this one. Although reasonable minds may differ, it does not appear that the Board of Selectmen is seeking to release the Town's interest in the APRs. To the contrary, through the proposed amendment, the Town expressly retains all of its rights under the three APRs, including the right to require that the Property be used for agricultural purposes and the right of first refusal. The only proposed change is an amendment to the general conditions of APR 3 to allow a use incidental to the other agricultural uses of the property. In fact, the amendment is

**KOPELMAN AND PAIGE, P.C.**

Hon. Kelly Ross and  
Members of Board of Selectmen  
June 10, 2016  
Page 3

specifically conditioned on the owner restoring the land of the two contiguous parcels to active agricultural use. Therefore, in my opinion, it is reasonable to conclude that the proposed amendment to APR 3 is not a "release" within the meaning of M.G.L. c. 184, §32, and as such, it is not a disposition of the Town's interest in the land.

Because it does not appear that the Town is releasing its interest in the APR, it can be argued that Town Meeting approval was not even required to authorize the amendment. While the General Laws require Town Meeting approval for the Board of Selectmen to acquire and dispose of interests in land, the terms of such transactions are generally left to negotiation by the Board. In fact, when Town Meeting authorized acquisition of the subject APRs, Town Meeting specifically left negotiation of the specific terms to the Board of Selectmen. I am not aware of any provision in the General Laws that requires Town Meeting approval for an amendment in the terms of an existing interest in land. To the contrary, M.G.L. c. 40, §3 allows the Board of Selectmen to make such orders as it may deem necessary or expedient for the use of its corporate property. Therefore, in this circumstance where the Board of Selectmen appear to have the authority to act without Town Meeting approval, it can be argued that any Town Meeting vote is advisory in nature and, any such advisory vote may be by simple majority.

Even assuming that the amendment can be considered a disposition of the Town's interest in the property, it is my opinion that the amendment is subject to approval by majority vote at Town Meeting. Pursuant to M.G.L. c. 40, §3, the Board of Selectmen may convey an interest in the Town's real estate when authorized to do so by a majority vote at Town Meeting. A two-thirds vote is only required when the land is held for a particular purpose and it needs to be transferred for some other purpose, such as for purposes of conveyance. See, M.G.L. c. 40, §15A. In this matter, the Board is not seeking to change the purpose for which the restriction is held by the Town. The Town's only interest in the property is to ensure that the requirements of the restriction are complied with and to exercise its right of first refusal, if applicable. This purpose does not change as a result of the proposed amendment. In fact, even after the amendment, the Town retains the right to enforce the restrictions and to exercise its right of first refusal. Therefore, because the purpose for which the property is held by the Town remains the same, it is my opinion that any change in the terms of APR 3, to the extent such change is considered a disposition, requires only a majority vote at Town Meeting.

Applicability of Article 97

Article 97 states, in relevant part, that "Lands and easements taken or acquired for [agricultural] purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote, taken by yeas and nays, of each branch of the general court." According to guidance from the Massachusetts Executive Office of Environmental Affairs, Article 97 is triggered when there is:

- a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or

**KOPELMAN AND PAIGE, P.C.**

Hon. Kelly Ross and  
Members of Board of Selectmen  
June 10, 2016  
Page 4

license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

<http://www.mass.gov/eea/agencies/mepa/about-mepa/eea-policies/eea-article-97-land-disposition-policy.html>

In this matter, as previously discussed, it does not appear that the Town intends to transfer or convey any interest in the Property and the proposed amendment does not effect any change in physical or legal control of the Property. The Town continues to hold the right to enforce the APRs and its right of first refusal. Moreover, the proposed amendment is expressly conditioned upon the property owner maintaining the land in active agricultural use, and the amendment is revocable if that condition is not met. Therefore, it is reasonable to conclude that the amendment is not a disposition that triggers the requirements of Article 97. See Mahajan v. Department of Environmental Protection, 464 Mass. 604 (2013) (although the granting of an easement over Article 97 land is a disposition, a disposition of a lesser property interest, such as a Chapter 91 license is not a disposition); McClure v. Epsilon Group, LLC, 19 LCR 384 (Land Court 2011) (no disposition for Article 97 purposes where the benefitted party has not given up any rights under a restriction); Miller v. Commissioner of DEP, 23 Mass.App.Ct. 968 (1987) (revocable permit to operate ski area not a disposition for Article 97 purposes).

While it seems reasonably clear that the amendment is not a disposition for Article 97 purposes, the question of whether the amendment constitutes a change in use for Article 97 purposes is a closer one. While the Property has not previously been used as a restaurant/function hall, in my opinion, that is not the sole deciding factor in determining whether there is a change in use for Article 97 purposes. When Town Meeting authorized acquisition of the APRs, it left the determination of what uses would be allowed to the discretion of the Board of Selectmen. There is nothing in the Town Meeting vote that limits the Board's discretion or that suggests that the Board could not have allowed this use in connection with the original APRs. If the Board could have allowed this use as part of the original APRs, it can be argued that an amendment of the APR does not constitute a change in use for purposes of Article 97.

Moreover, although the Town acquired three APRs, the subject property comprises two abutting parcels, and it is my understanding that they have historically been used as one. In fact, it is my understanding, based on the configuration of the property lines, that it is unlikely that the parcels could be separated. The three APRs work in concert with each other to ensure that the Property as a whole remains in agricultural use. Even with the two parcels combined, however, the Board of Selectmen found that the viability of the property for sustained agricultural use is limited due to its small size, topography and location. This finding is supported by the fact that the parcels have been allowed to lie fallow for several years, and the "country store" building is vacant and in disrepair, such that they have become a blight on the surrounding neighborhood.

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KOPELMAN AND PAIGE, P.C.

Hon. Kelly Ross and  
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June 10, 2016  
Page 5

Based on the property owner's stated intention of restoring agricultural use on the property, the Board found that allowing the use of one of the APR areas for restaurant and function hall purposes would have a positive effect on the public good and yield a substantial benefit to the agricultural resources of the Town. The proposed amendment is expressly conditioned upon the requirement that the remainder of the property be kept in active agricultural use, and the Board of Selectmen retains the authority to enforce the terms of the APRs should the property owner fail to comply with that requirement. Therefore, in light of these factors, it is reasonable to conclude that the amendment promotes the agricultural uses of the Property rather than changing the use of the Property to something different. Therefore, it is my opinion that the Board of Selectmen may reasonably determine that the amendment does not constitute a change in use for purposes of Article 97.

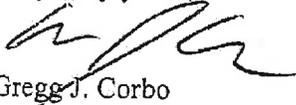
Approval of Department of Agriculture

Prior to submission of the matter to Town Meeting, 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.

In summary, the determination of whether the proposed amendment constitutes a release of the APRs or change in use for Article 97 purposes requires a highly fact-specific determination, and judging by the amount of public discussion and controversy that this matter has generated, it is a determination in which reasonable minds can differ. Although I have researched the issue, I have not found any precedent which conclusively supports or contradicts the Board's decision to treat the proposal as an amendment rather than a release of the APR. As with any other matter of interest to the public, there is always a risk of legal challenge. While I cannot predict the outcome of any such legal challenge, it is my opinion that the Board has reasonable support for its position that the proposed amendment does not require the approval of a two-thirds Town Meeting vote and/or the approval of the State Legislature under Article 97.

Please do not hesitate to contact me if you have any further questions in this regard.

Very truly yours,

  
Gregg J. Corbo

GJC/lem  
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Page



United States Department of Agriculture

Natural Resources Conservation Service  
Westford Field Office, 319 Littleton Rd., Ste. 205, Westford, MA 01886  
978-692-1904 ext. 3 | fax 855-596-7671 | www.ma.nrcs.usda.gov

August 22<sup>nd</sup>, 2016

Mr. Ebrahim Masalehdan  
Westford Gateway LLC  
31 Progress Avenue  
Tyngsborough, MA 01879

RECEIVED  
AUG 30 2016  
PERMITTING

Mr. Masalehdan:

On July 22<sup>nd</sup>, Maggie Payne, NRCS Resource Soil Scientist, visited 66-68 Boston Road, Westford to provide an on-site soil investigation as requested. She provided the attached report regarding the soil of the property based upon several "hand dug" test pits.

I prepared two map images of the property to base the comments I provide. One of the photos was taken in the spring of 2013 and the other early summer of 2016. The image from 2013 was taken prior to spring leaf out and at greater resolution than the 2016 image.

I created 5 arbitrary areas upon the image to reference several comments. The areas loosely resemble areas on the image that show management activity on the property the past few years.

Areas 2, 3, 4 consist primarily of Charlton soils (Ch) as referenced in the July 27<sup>th</sup> report by Maggie Payne. These areas have acceptable soil characteristics for annually tilled crop production. These areas will require a "modest" amount of field preparation to establish an agricultural crop. The land will require tillage (plowing and disking) to incorporate present vegetation, compost and other organic material on the soil surface. As this land has been managed as orchards for many years, it is likely that some surface stones will be exposed during the process. "Rock picking", the removal of surface stones in fields may be necessary. This is generally completed by hand, but specialized machinery is available to complete this task.

A soil test should be analyzed to determine the present nutrient status and pH of the soil. The soil analysis will provide crop specific agronomic recommendations for future crop production. The University of Massachusetts soil testing lab provides numerous soil services for crop production, <http://soiltest.umass.edu/>

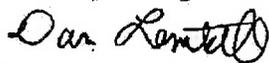
Area 1 consists primarily of Udorthents – gravel (Ug) as referenced in the July 27<sup>th</sup> report by Maggie Payne. This soil description refers to areas that have been greatly manipulated or created by human activity. The area has approximately 12 inches of compost and organic material spread on top of a compacted gravelly soil material. It may require an extensive amount of field preparation to prepare the area for any type of agricultural operation. Annually tilled crops may not be possible in this area because of the limited top soil and compacted gravel subsoil.

Blueberries, cane berries and other small fruit may be possible with further manipulation and augmentation of the soil. Deep tillage (often using a bulldozer and ripper tooth) or other specialized tillage equipment may be needed to loosen the compacted gravel prior to plowing to incorporate the organic material on the soil surface. The organic material is a mixture of compost, mulch materials and coarse woody material and will be difficult to incorporate into the soil surface with one action. Multiple tillage or plowing actions will be needed in addition to "rock picking."

Area 5 consists primarily of Charlton soils – very stony (ChS) as referenced in the July 27<sup>th</sup> report by Maggie Payne. The area has remnants of landscape fabric used beneath potted flowers in recent years. There is sparse, weedy vegetation and many stones and cobbles on the soil surface. The potential for annually tilled crop production is limited because of the apparent limited top soil in some of the area. With the incorporation of additional organic matter or addition of acceptable topsoil, the area may be able to produce fruit and berry crops in the future. The presence of large stones and boulders affects the tillage options as well as crop growth potential of the soil.

An alternative means of assessing the potential for this area is to till and "rock pick" the area followed by the establishment of a suitable "cover crop." Assessing the growth of the cover crop will provide information of the productive capacity of the area. Areas of shallow soil or droughty patches will generally be observable in the plant response.

In Summary, Areas 2, 3, 4 have the greatest likelihood of annual crop production. Areas 1 and 5 will require greater effort to prepare the land for any type of agricultural production, but longer term crops will generally be better adapted to the site with corresponding management inputs.



Dan Lenthall

District Conservationist – NRCS  
Westford, MA

United States Department of Agriculture



Natural Resources Conservation Service  
15 Cranberry Highway  
West Wareham, MA 02576  
Phone: 508-295-5151x2 Fax: 855-896-7671



*Helping People Help the Land...*

**To:** Dan Lenthall, District Conservationist

**Date:** 7/22/2016

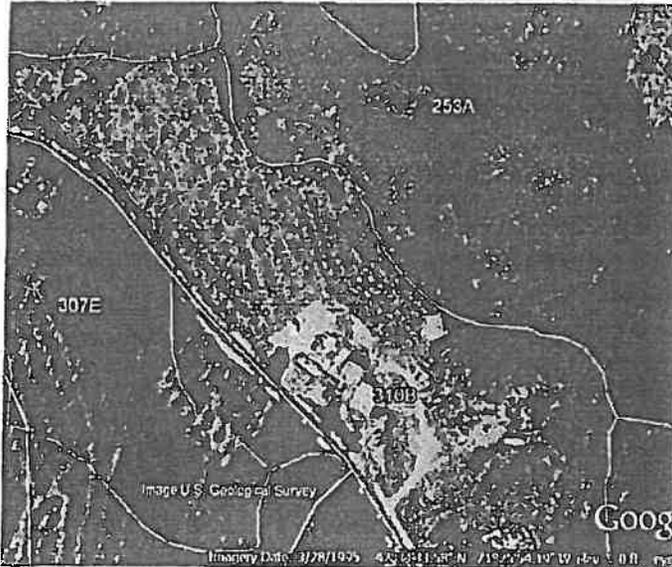
**Subject:** Onsite soils investigation at 66-68 Boston Road in Westford, MA

**Purpose:** An onsite soils investigation was requested at the property at 66-68 Boston Road in Westford to determine the current soil types and agricultural potential and limitations to the soils.

**Participants:** Maggie Payne, Resource Soil Scientist, NRCS  
Dan Lenthall, District Conservationist, Westford, NRCS  
Liz McGuire, Conservation Planner, MACD

**Onsite Procedure:** The soils were observed onsite through hand dug shovel pits. Soil descriptions were made at the test sites and a detailed soil map of the area was made based on soil observations and landscape patterns.

**Results and Discussion:** This approximately 8 acre property was planted as an orchard in the past. Beginning in the year 2000, portions of the orchard were removed and covered in plastic to grow potted plants. The section behind the building was stripped of sand and gravel and used as parking, storage for compost material, and greenhouse structures (see photos below of land use changes).

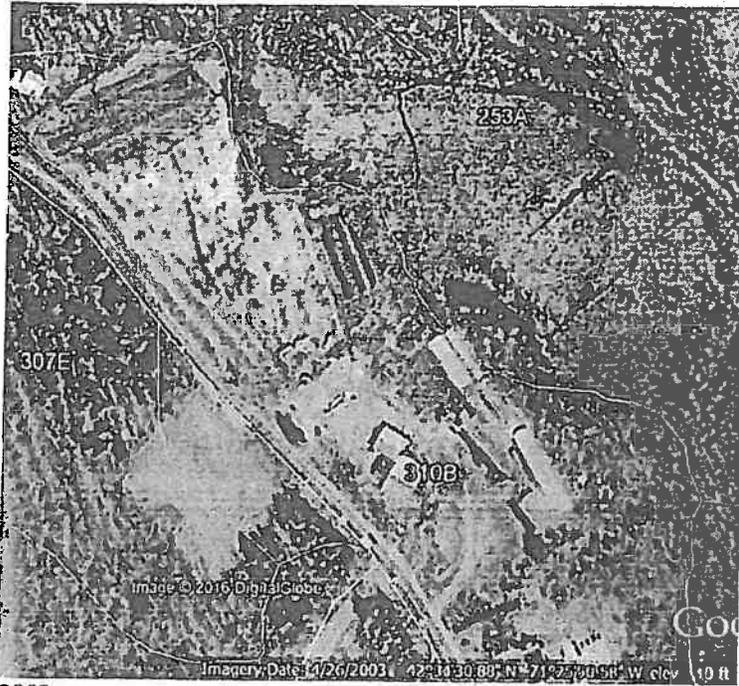


1995

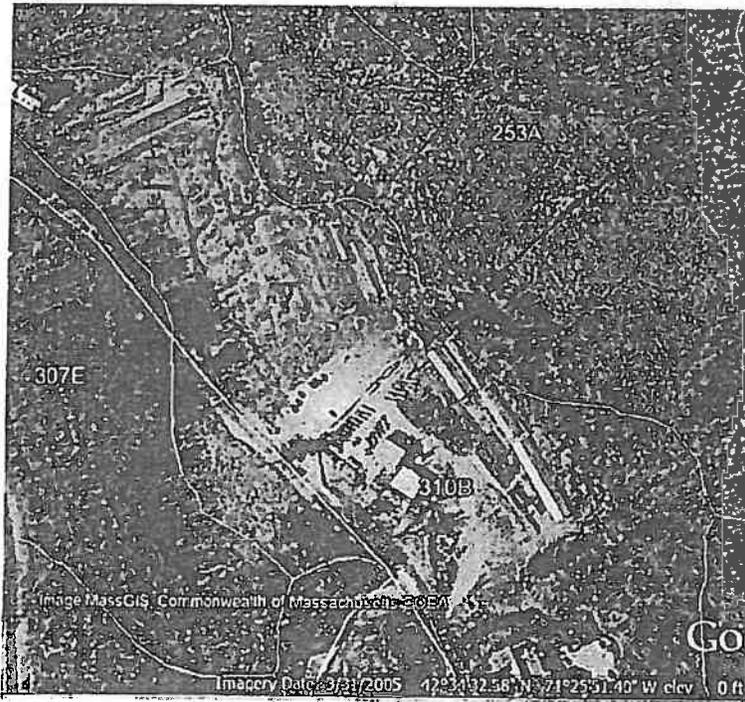
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PERMITTING

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

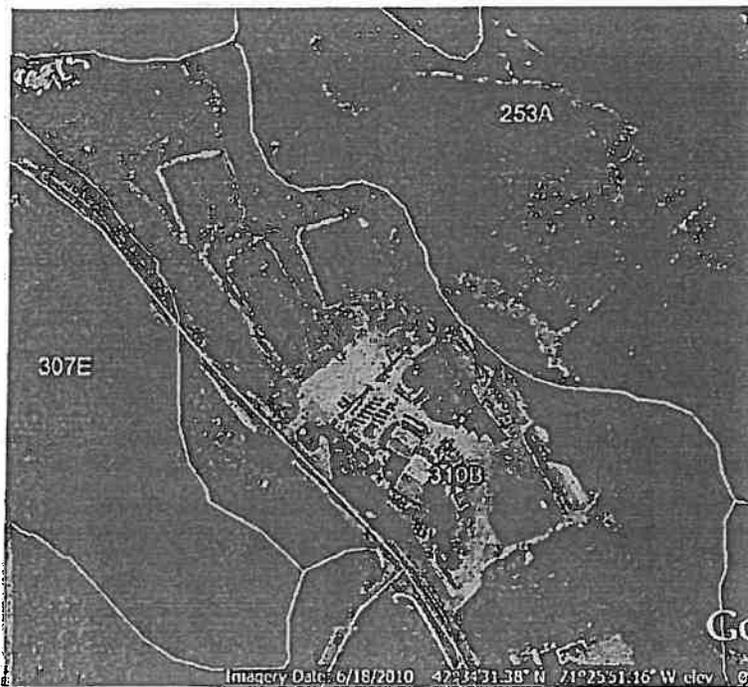
An Equal Opportunity Provider and Employer



2003



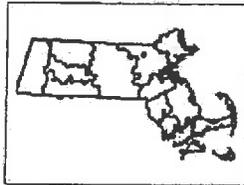
2005



2010

This entire property is mapped as 310B; Woodbridge fine sandy loam, 3-8% slopes in the Middlesex County Soil Survey, published in 2009. This soil survey was mapped at a scale of 1:25,000 with minimum delineations of 6-8 acres. Woodbridge soils are moderately well drained loamy soils formed in lodgment till. They have a dense soil layer within 100 cm of the soil surface. Woodbridge fine sandy loam 3-8% slopes is listed as a prime farmland soil for Middlesex County.

This onsite soils investigation showed the majority of the soils to be closer to the Charlton soil series as no dense layer was observed at the depths investigated. The soil map below indicates the observation points and the soil types observed onsite. This map represents a detailed onsite soil investigation and does not replace the official soil survey data for the county.



Legend

- Sample points
- 1m\_contours
- Soil types



1.1761

Created: 7/27/2016

| Mapunit                    | acres | MU_symbol |
|----------------------------|-------|-----------|
| Charlton soils, 8% slope   | 2.4   | Ch        |
| Charlton soils, very stony | 2.1   | ChS       |
| Leicester soils, 3% slopes | 0.6   | Le        |
| Udorthents - gravel        | 2     | Ug        |
| Urban land                 | 1.3   | Ub        |

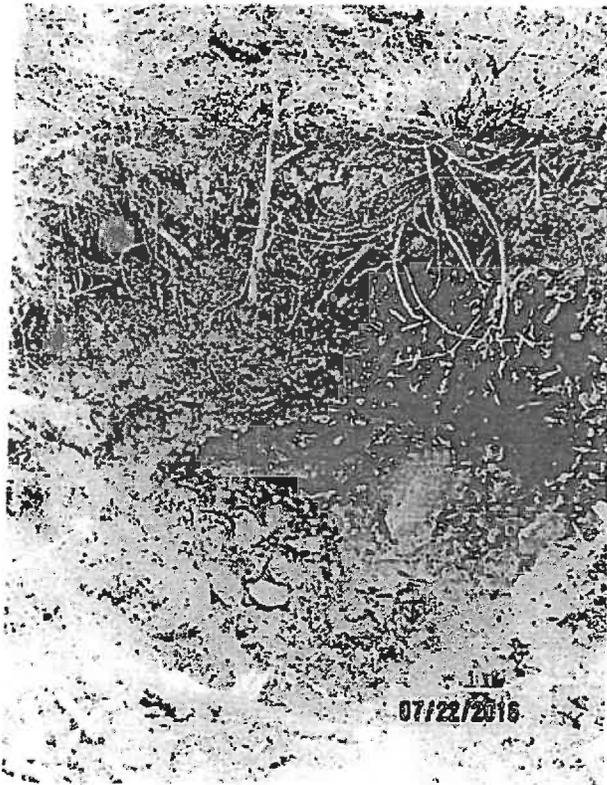
Soil descriptions:

**Ub – Urban land** (1.3 acres) - This area is dominated by the building and parking lots and soils were not investigated here.

**Ug – Udorthents – gravel** (2 acres) - Point 294

This area was reportedly mined for sand and gravel. Historic aerial photography shows that it has been used for parking and storage of composting material. Approximately 12 inches (30 cm) of human transported material consisting of partially decomposed mulch and compost has been spread on the soil surface. This material would be considered a loamy sand with added organic material. It contains a large amount of undecomposed wood fragments and approximately 5% medium gravel. Below this layer is a very gravelly, firm, loamy sand soil with approximately 40% medium to coarse gravel and cobbles.

This soil would be considered limiting to agriculture due to the shallow depth (12 inches) to a root and water limiting layer as well as the very gravelly texture of the subsoil.



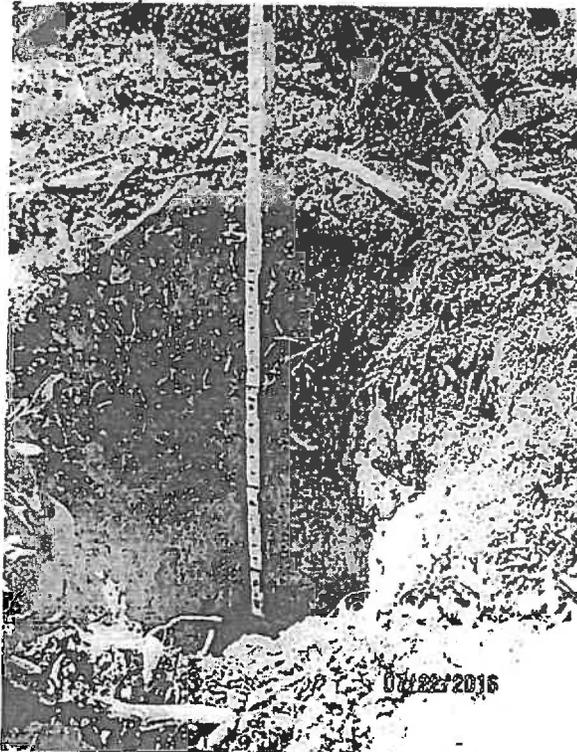
Date 7/22/2016 Described By: M. Payne Location: Site ID: wpt 294

| Horizon |            |           | Texture |   | Matrix color          | Redoximorphic Features |           |      |          |       | Structure |      | Consistence | other notes |                      |
|---------|------------|-----------|---------|---|-----------------------|------------------------|-----------|------|----------|-------|-----------|------|-------------|-------------|----------------------|
| Name    | Depth (in) | Bndry     | Class   | % CF  | Hue, Value/<br>Chroma | Type                   | Abundance | Size | Contrast | Color | Grade     | Size |             |             | Shape<br>(Type)      |
| ^Ap     | 0-12       | abrupt/sl |         | 20% wood<br>fragements;<br>5% gravel (1/2<br>to 1 inch) | 10YR 3/2              | -                      | -         | -    | -        | -     | 0-        |      | MA          | friable     | common<br>fine roots |
| Bw      | 12-21+     |           | ls      | 40%<br>subrounded<br>gravel (1-8<br>inches)             | 2.5Y 4/3              | -                      | -         | -    | -        | -     | 0-        |      | MA          | firm        |                      |

**Ch: Charlton soils (2.4 acres) - Point 295**

Charlton soils consist of loamy, well-drained soils formed in glacial till. This area consists of approximately 7 inches (18 cm) of human transported material from partially decomposed mulch and compost loamy sand material spread on the soil surface. The natural soils surface to approximately 14 inches (35 cm) is firm in place indicative of man-made compaction. The layer below this, down to 19 inches (48 cm) consists of fine sandy loam soil textures with a small fraction (5-10%) gravels. Beginning at 19 inches (48 cm), the subsoil is gravelly, friable, fine sandy loam.

Charlton soils are considered prime and important farmland soils in Middlesex County. The slope at this site is approximately 8%, making the risk of erosion due to slope the only limitation for farmland soil in this map unit.

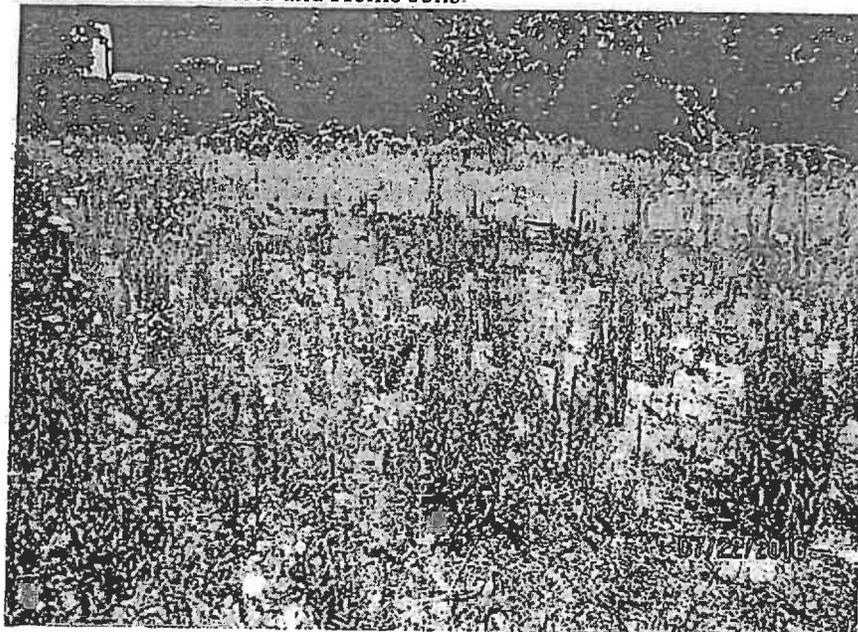


Date: 7/22/2016 Described By: M. Payne Location: Site ID: wpt 295

| Horizon |            |        | Texture |                           | Matrix color          | Redoximorphic Features |           |      |          |       | Structure |      |                 | Consistence   | other notes       |
|---------|------------|--------|---------|---------------------------|-----------------------|------------------------|-----------|------|----------|-------|-----------|------|-----------------|---------------|-------------------|
| Name    | Depth (in) | Bdry   | Class   | % CF                      | Mue. Value/<br>Chroma | Type                   | Abundance | Size | Contrast | Color | Grade     | Size | Shape<br>(Type) |               |                   |
| ^Ap     | 0-7        | abrupt | ls      | 30% coarse woody debris   | 10YR 3/2              | -                      | -         | -    | -        | -     | 0         | -    | MA              | friable       | common fine roots |
| Ap      | 7-14       | clear  | fsl     | 5% fine and med gravel    | 10YR 3/2              | -                      | -         | -    | -        | -     | 1         | -    | SBK             | firm in place |                   |
| Bw      | 14-19      | clear  | fsl     | 8% med and coarse gravel  | 10YR 5/6              | -                      | -         | -    | -        | -     | 1         | -    | SBK             | friable       |                   |
| C       | 19-28+     |        | fsl     | 20% med and coarse gravel | 10YR 5/4              | -                      | -         | -    | -        | -     | 0         | -    | SG              | friable       |                   |

**ChS: Charlton soils – very stony (2.1 acres) - Point 296**

The shoulder slopes consists of soils similar to those in the area mapped as Charlton, but the soils in this area lack the finer surface texture. The very stony soil surface and high percentage of gravel and cobbles in the soil make this soil limiting to agriculture. It appears that past land use has caused erosion of the soil surface, leaving a shallow, rocky soil. These areas also contain some large exposed boulders and possible bedrock that would be indications of inclusions of Chatfield and Hollis soils.



Date 7/22/2016 Described By: M. Payne Location: Site ID: wpt 296

| Horizon |            | Texture |       |  | Matrix color       | Redoximorphic Features |           |      |          |       | Structure |      |              | Consistence | other notes       |
|---------|------------|---------|-------|--|--------------------|------------------------|-----------|------|----------|-------|-----------|------|--------------|-------------|-------------------|
| Name    | Depth (in) | Bndry   | Class | % CF                                     | Hue, Value/ Chroma | Type                   | Abundance | Size | Contrast | Color | Grade     | Size | Shape (Type) |             |                   |
| Ap      | 0-9        | abrupt  | fsl   | 15% gravel                               | 10YR 3/3           | -                      | -         | -    | -        | -     | 0         | -    | SG           | friable     | common fine roots |
| Bw      | 9-12+      |         | fsl   | 40% subrounded gravel and cobble (1-10") | 10YR 5/6           | -                      | -         | -    | -        | -     | 0         | -    | SG           | friable     |                   |

**Le: Leicester soils (0.6 acres) - Point 297**

These poorly drained soils formed in coarse-loamy till are found in the low-lying positions of the landscape. Evidence of the high water table was observed at 10 inches (25 cm). These soils have a fine sandy loam texture and lack the significant amount of gravel of the other soils on this site.

These soils can be well suited for agriculture, limited only by wetness during the spring.

Date 7/22/2016 Described By: M. Payne Location: Site ID: wpt 297

| Horizon |            | Texture |       |           | Matrix color       | Redoximorphic Features |           |      |          |           | Structure |      |              | Consistence |
|---------|------------|---------|-------|-----------|--------------------|------------------------|-----------|------|----------|-----------|-----------|------|--------------|-------------|
| Name    | Depth (in) | Bndry   | Class | % CF      | Hue, Value/ Chroma | Type                   | Abundance | Size | Contrast | Color     | Grade     | Size | Shape (Type) |             |
| Ap1     | 0-10       | clear   | fsl   |           | 10YR 3/2           | -                      | -         | -    | -        | -         | 1         | fine | SBK          | friable     |
| Ap2     | 10-19      | clear   | fsl   |           | 10YR 3/1           | conc                   | 5%        | med  | -        | 7.5YR 4/6 | 1         | med  | SBK          | friable     |
| Bw      | 19-21+     |         | fsl   | 5% gravel | 2.5Y 5/3           | conc                   | 10%       | med  | -        | 7.5YR 4/6 | 1         | med  | SBK          | friable     |

Submitted 7/27/2016  
 by  
 Maggie Payne  
 Resource Soil Scientist  
 NRCS  
 West Wareham, MA

66 - 68 Boston Road  
(2016 image)

Date: 8/15/2016

Customer(s): Ebi Masalehdan

Approximate Acres: 8.5



Field Office: Westford Service Center  
Agency: USDA - NRCS  
Assisted By: DANIEL LENTHALL



**Legend**

- Area 5
- Area 4
- Area 3
- Area 2
- Area 1

66-68 Boston Road

NE\_EAWS\_4B\_2016

**RGB**

- Red: Band\_1
- Green: Band\_2
- Blue: Band\_3



66 - 68 Boston Road  
(2013 image)

Date: 8/15/2016

Customer(s): Ebi Masalehdan

Field Office: Westford Service Center  
Agency: USDA - NRCS

Approximate Acres: 8.5

Assisted By: DANIEL LENTHALL



Legend

- Area 5
- Area 4
- Area 3
- Area 2
- Area 1

66-68 Boston Road

- MA Towns



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# ALPHEN & SANTOS, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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[www.alphensantos.com](http://www.alphensantos.com)

Paul F. Alphen, Esquire

Maria L. Santos, Esquire

Sandra M. Meneses, Esquire

September 12, 2016

Drew Gardens Task Force  
Town of Westford  
55 Main Street  
Westford, MA 01886

Westford Board of Selectmen  
Town of Westford  
55 Main Street  
Westford, MA 01886

RE: Westford Gateway, LLC/66-68 Boston Road, Westford

Dear members of the Task Force and Board of Selectmen:

We would like to address the questions that have arisen regarding the definition of "Farm to Table" and the connections between the proposed restaurant/function hall and the other agricultural parcels (APR 1 and 2 Parcels).

As proposed in the amendment to APR 3, the use of the land for restaurant/function hall purposes are expressly contingent upon the contiguous parcels (APR 1 and 2) being actively engaged in agricultural use, and the right to use the APR 3 land for a restaurant/function hall shall be forfeited if such use of said contiguous parcels is abandoned or changed.

Additionally, our client wants to do its best to incorporate locally grown fruits and vegetables, and locally sourced meat and fish, into its menu; in addition to using produce grown on site. The restaurant will be committed to the support of local farmers, so that the restaurant will have a positive impact on Massachusetts agricultural business as a whole, and not just limited to the Boston Road land.

?  
Explain  
the →

There is no question that a restaurant is considered to be an agricultural use (exempt from zoning) provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located. For more detail see MGL Chapter 40A Section 3. But because of the limited land area of the three (3) APR parcels, our client cannot produce 25% of its products on site and sustain any reasonable business plan (as supported by the presenters at the July 21, 2016 Task Force meeting). However, our client can make the following commitments:

1. After the third growing season, during the harvest season of the primary crop raised on the land, at least twenty five (25%) percent of the produce sold in the restaurant facility shall be grown on the site.
2. During the months of June, July, August and September of each year, at least fifty (50%) percent of the produce sold in the restaurant facility shall be grown at Massachusetts farms; with a preference toward local farmers.
3. The balance of the year, our client will do its best to source its produce from Massachusetts farms.

If our client was operating a vegetarian restaurant, using the above criteria, the restaurant would qualify as a protected, permitted agricultural use. However, our client's menu will also contain meat, poultry and seafood. To include a wider menu while supporting local farmers, our client will also make the following additional commitments:

4. At least eighty percent (80%) of the beef, pork, lamb, and veal served at the restaurant will come from Massachusetts farms, with a preference for local farmers.
5. At least fifty percent (50%) of the poultry served at the restaurant will come from Vermont farms that do not use growth hormones or other non-organic means, and the balance will come from local farms in Massachusetts.
6. At least ninety (90 %) of the seafood served at the restaurant will come from fishermen/women based in Massachusetts with the remaining ten percent (10%) sourced within New England.

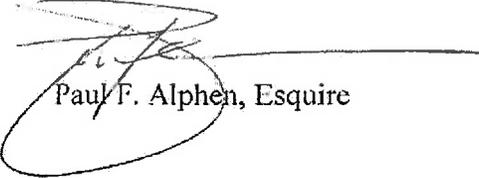
Our client is committed to the support of local farmers and the cultivation of crops on APR parcels 1 and 2. Our client anticipates that the above commitments will be incorporated within

conditions of approval issued by the various Westford boards applicable to the operation of its facility.

We look forward to responding to any questions you may have. Thank you for your attention to this matter.

Very truly yours,

Alphen & Santos, P.C.



Paul F. Alphen, Esquire

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June 20, 1996

Richard K. Hubbard  
Assistant Commissioner  
Department of Food and Agriculture  
100 Cambridge Street  
Boston, MA 02202

Re: Agricultural Preservation Restriction Act  
Summary Letter  
Our File No. 96-01

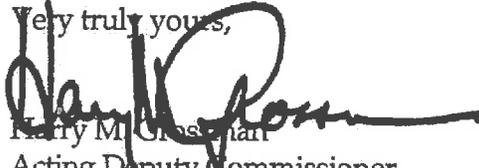
Dear Assistant Commissioner Hubbard:

Enclosed please find a letter summarizing our understanding of the local property tax assessment aspects of the Agricultural Preservation Restriction Act. I apologize for any delay in providing you with this response.

As you apparently wish to have this available for distribution when necessary, I have addressed it to Commissioner Healy. Also, if there are any points that you feel require further discussion or consideration, please do not hesitate to contact me.

One issue that arose recently, but was not addressed because of its particularity, related to the implementation date of the reduced values for land newly restricted under the A.P.R.A. In the Commonwealth, January 1 is the assessment date for the ensuing fiscal year, and a legal restriction such as an agricultural preservation restriction would have to be acquired and recorded at the Registry of Deeds prior to such date in order to be effective for local property tax assessment purposes in the ensuing fiscal year. For example, if the reduced values resulting from a restriction were to be effective for fiscal year 1997 (July 1, 1996 through June 30, 1997), the restriction would have to be on record at the Registry of Deeds on or before January 1, 1996. If the restriction were not recorded until after January 1, 1996, the reduced values could not be implemented until fiscal year 1998. As this issue arose recently, I thought I would simply mention it herein.

I hope this information proves helpful. If I may be of any additional assistance in this or any other matter, please do not hesitate to contact me.

Very truly yours,  
  
Harry M. Grossman  
Acting Deputy Commissioner

HMG/jeb  
enc.



June 20, 1996

Jonathan L. Healy, Commissioner  
Department of Food and Agriculture  
100 Cambridge Street  
Boston, MA 02202

Re: Taxation of Land Subject to an Agricultural Preservation Restriction,  
Chapter 780 of the Acts of 1977  
Our File No. 96-01

Dear Commissioner Healy:

This letter presents a general statement of this Department's interpretation of the provisions of the Agricultural Preservation Restriction Act relating to the assessment of local property taxes. To the extent that more particular issues arise in this regard, we are always available to respond to inquiries from your office, landowners or local officials.

The Agricultural Preservation Restriction Act was enacted by Chapter 780 of the Acts of 1977 and is found in the General Laws as Chapter 132A, Sections 11A through 11D inclusive. Section 11D of the Act addresses the local taxation of restricted real estate, and expressly provides that land subject to an agricultural preservation restriction, while "actively devoted" to agricultural or horticultural uses as defined in Sections 1 through 5 of Chapter 61A of the General Laws, shall be assessed at values no greater than those determined in accordance with Section 10 of Chapter 61A, i.e., at the agricultural or horticultural "use" value.

In our view, land subject to an agricultural preservation restriction will qualify as "actively devoted" to agricultural or horticultural uses as defined in Chapter 61A provided the size, use and gross sales requirements set forth in Sections 1 through 5 of Chapter 61A are satisfied. Accordingly, while the restricted land continues to satisfy these requirements, i.e., remains "actively devoted" to farming, it will be entitled to be valued and assessed solely on the basis of its agricultural or horticultural "use" as prescribed in Chapter 61A..

For purposes of determining the agricultural use value of restricted land, the Agricultural Preservation Restriction Act expressly refers to Section 10 of Chapter 61A.

Jonathan L. Healy, Commissioner  
Department of Food and Agriculture  
Page Two

This section requires that the land be valued solely on the basis of its agricultural or horticultural use, and that local assessors be guided by the list of ranges of value published annually by the Farmland Valuation Advisory Commission and by their personal knowledge, judgment and experience as to local land values. Consequently, the ranges of value published by the Farmland Valuation Advisory Commission are equally applicable when determining the value of farmland restricted under the Agricultural Preservation Restriction Act.

With respect to administrative matters, although reference is made in the Agricultural Preservation Restriction Act to certain sections of Chapter 61A, formal classification of restricted land under Chapter 61A is not required. Consequently, the requirements and provisions of Chapter 61A which are not specifically referred to in the Agricultural Preservation Restriction Act, such as the annual application requirement, the lien recording requirements and the conveyance and roll-back tax provisions, are not applicable to land subject to an agricultural preservation restriction. As previously mentioned, however, the Agricultural Preservation Restriction Act requires that the restricted land, while farmed, be assessed in accordance with the values prescribed by the F.V.A.C. for the various categories of crops and agricultural uses. Accordingly, an owner of agricultural preservation restriction land should annually provide the assessors with specific information as to the particular agricultural uses or crops upon the land and the acreage devoted thereto in the current year. The assessors, in turn, should use this information to determine and assign the appropriate values as recommended by the Farmland Valuation Advisory Commission for the various categories of agricultural land.

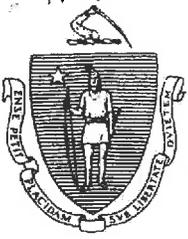
I hope this information proves helpful. If any questions remain after a review of the enclosed materials or additional clarification is required, please do not hesitate to write or call.

Very truly yours,

  
Harry M. Grossman  
Acting Deputy Commissioner

HMG/jeb  
encs.

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COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF FOOD AND AGRICULTURE

LANCASTER REGIONAL FIELD OFFICE  
142 OLD COMMON ROAD, LANCASTER, MA 01523 (508) 792-7711 FAX (508) 365-2131

WILLIAM F. WELD  
Governor

TRUDY COXE  
Secretary

ARGEO PAUL CELLUCCI  
Lt. Governor

JONATHAN L. HEALY  
Commissioner

November 12, 1996

Dear Board of Assessors:

This letter is intended to serve as official notice that the properties shown on the attached list have been permanently protected for agricultural use through an Agricultural Preservation Restriction (APR) pursuant to Sections 11A through 11D of Chapter 132A and Section 31 through 33 of Chapter 184 of the Massachusetts General Laws.

Although the specific language in each of the APRs may vary, they all run in perpetuity and prohibit activities that will negatively impact the future agricultural viability of the restricted land. In addition, they limit use of the restricted land to agriculture related activities, although more recent APRs may allow for limited nonagricultural activities by "special permit" approval by this department. Finally, construction on restricted land in most cases requires this department's prior approval.

Section 11D of Chapter 132A of the General Laws states the "Land under agricultural preservation restriction, while actively devoted to agricultural, horticultural or agricultural and horticultural use as defined in sections one to five, inclusive, of Chapter sixty-one A, shall be assessed for general property tax purposes at values no greater than those determined by the methods and provisions of section ten of said Chapter sixty-one A." This means that APR protected land must be assessed on the basis of its current agricultural use. Attached is a letter from the Massachusetts Department of Revenue which further addresses this issue. *Sel June 20, 1996*

If you have any questions concerning APRs in your town, please do not hesitate to contact our Lancaster field office at the above address and phone number. We will keep you informed of additions to the attached list as they are acquired by this department.

Sincerely,

Richard K. Hubbard  
Assistant Commissioner

cc: Conservation Commission  
Building Inspector

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