

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

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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:

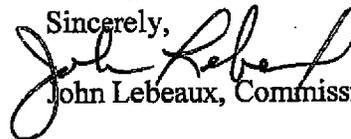
“An agricultural preservation restriction means a right, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land appropriate to retaining land or water areas predominately in their agricultural 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