

Questions posed to Town Counsel between March 2016 and September 2016 regarding proposal restaurant at 66 Boston Road

AND

Questions posed to MDAR in September 2016

#	Questions to Town Counsel	Source	Date Response Received
1.	Advise us as to whether the proposed amendment to APR #3 requires any procurement process under chapter 30B.	Kluchman email March 11, 2016	March 14, 2016 Corbo email
2.	Whether a decision to amend an Agricultural Preservation Restriction requires a two-thirds vote of Town Meeting?	Board of Selectmen May 24, 2016	June 13, 2016 Corbo letter
3.	Whether the decision to amend an Agricultural Preservation Restriction requires approval of the Massachusetts Legislature in accordance with Article 97 of the Massachusetts Constitution?	Board of Selectmen May 24, 2016	June 13, 2016 Corbo letter
4.	Whether the decision to amend the Agricultural Preservation Restriction requires approval of the Department of Agriculture?	Board of Selectmen May 24, 2016	June 13, 2016 Corbo letter
5.	Prepare a document advising the board on pertinent town bylaws, state agency policies, state laws, Commonwealth of Massachusetts regulations, or Articles of the Constitution, as well as the terms of APR 3 which the board must adhere to regarding the process to release, in whole or in part, a restriction or right the town holds for Agricultural Preservation Restriction #3 on agricultural property located on Boston Road.	Siriani email May 27, 2016	June 14, 2016 Corbo email
6.	Are these APR parcels subject to Article 97? If so, what is the process that must be adhered to in order to release a restriction in whole or in part?	Siriani email May 27, 2016	June 14, 2016 Corbo email

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7.	Can the APR which was certified by the Commissioner of Food and Agriculture in 1999 as having “been approved in the public interest”, and granted to the Commonwealth and the Town of Westford, be amended such that rights are conveyed without also being subject to further review or approval by the Commissioner? If so, can the inclusion of non-agricultural functions be added to an APR retained rights section if it would create a right or privilege which is inconsistent with an APR’s statement of purpose section?	Siriani email May 27, 2016	June 14, 2016 Corbo email
8.	If an APR includes language that the restriction, in whole or in part, may only be released by the procedures established in c 184 s 32 and “otherwise by Article 97 of the Constitution” might that require a two thirds vote of the General Court prior to such a release?	Siriani email May 27, 2016	June 14, 2016 Corbo email
9.	Did Westford seek guidance from the Department of Agriculture prior to entering into agreements to amend conditions of an APR? If so, what guidance did the town receive?	Siriani email May 27, 2016	June 14, 2016 Corbo email
10.	If Westford Gateway, LLC is the owner of the parcels of land at 66-68 Boston Road can the person or people who have a controlling interest of the LLC transfer or convey in some manner the majority interest of the LLC or some future transfer of its assets without a signed purchase and sales agreement of the parcels subject to the APRs?	Siriani email May 27, 2016	June 14, 2016 Corbo email
11.	We need input on what MGLs do apply when a town meeting is voting to dispose land not held for general purposes which is subject to an APR.	Siriani email May 27, 2016	June 14, 2016 Corbo email
12.	Does an amendment to the APR constitute “spot zoning”?	J. Ross inquiry	June 23, 2016 Corbo letter

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13.	Does the “actively engaged definition restrict the income that could allowably be produced by other income producing activities on APR 1 land (e.g. a farmstand or a restaurant)? That is, by way of example, if the maximum practical agricultural produce has a gross value of, say, \$100K/year, does the 51% clause limit the allowable revenue from a farmstand/restaurant to <\$100K?	Kluchman email August 1, 2016 (from DGTF member Bob Boonstra)	August 9, 2016 Corbo email
14.	More specifically, does approval of a Restaurant with income greater than the value of the agricultural produce require a change to the “50%” clause in the APR. This definition appears in all three of the APRs/	Kluchman email August 1, 2016 (from DGTF member Bob Boonstra)	August 9, 2016 Corbo email
15	Can the property owner install a fence and “No Trespassing” sign on the property?	J. Ross August 10, 2016 email	August 18, 2016 Corbo email
16.	Will the APR have to be amended if the property owner wishes to allow the Town to construct public sidewalks on the property?	J. Ross August 10, 2016 email	August 18, 2016 Corbo email
17.	Does the commonwealth have an interest in the APR that would require that any amendment be approved by a state agency?	J. Ross August 10, 2016 email	August 18, 2016 Corbo email
18.	Is the property owner in violation of the APR if he is not currently conducting agricultural activities on the property or is his plan for future use sufficient to satisfy the requirements of the APR?	J. Ross August 10, 2016 email	August 18, 2016 Corbo email
19.	Is it legally permissible to add a new Retained Right to an APR that was not present when the APR was executed?	Kluchman August 18, 2016 email (from DGTF member Bob Boonstra)	August 22, 2016 Corbo email
20.	If a restaurant were added to APR 3 as a Retained Right, does that new Retained Right supersede and bypass all of the APR language in Prohibited Uses, Activities that Require Written Approval, and Approval Process for Permitted Activities?	Kluchman August 18, 2016 email (from DGTF member Bob Boonstra)	August 22, 2016 Corbo email

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21.	Can a Limited Liability Corporation (LLC) be considered equal to “individual owner(s)” that is referenced in section III.D.3.a) of APRs 2 and 3? Does the language elsewhere in APR 1, 2 and 3 referring to the Grantors and their “heirs, devisees, legal representatives, successors and assigns” supersede such reference?	Kluchman August 30, 2016	Not yet answered
22.	Please elaborate on your opinions in the August 22, 2016 email about retained rights so the TF might better understand your conclusions.	Kluchman August 30, 2016 email	Not yet answered
23.	APR 3, Section III.D.3.a) refers to approvals that might be given by the BOS “to a farmer(s) actively engaged in full-time commercial farming.” If there is a contract farmer employed by the owner, would they meet this qualification?	Kluchman August 30, 2016 email	Not yet answered
24.	APR 3 does not appear to address what might happen if there were a catastrophe/fire or demolition of the existing farmstand. In your opinion, could the existing farmstand building be replaced under APR 5 and if so, by what process?	Kluchman August 30, 2016 email	Not yet answered
25.	The APR references that it is “in perpetuity”. Can you confirm that this is allowed (are there time limits to restrictions?)	Kluchman August 30, 2016 email	Not yet answered

Questions posed to MDAR in September 2016

#	Questions to MDAR	Source	Date Response Received
1.	Is the Massachusetts Department of Agriculture (MDAR) a “Grantee” on any of the 3 attached APRs?	Kluchman email September 6, 2016	9/22/16 letter
2.	Does MDAR have a legal interest in any of these APRs?	Kluchman email September 6, 2016	9/22/16 letter
3.	Does the MDAR need to approve amendments to any of these APRs?	Kluchman email September 6, 2016	9/22/16 letter
4.	Does the addition of the proposed restaurant/function hall constitute a “change of use”?	Kluchman email September 15, 2016	9/22/16 letter
5.	If the Town amends APR 3 to allow a new restaurant structure and use to the “Retained Rights” section of APR 3, is that action permissible under the 3 APRs that govern the property?	Kluchman email September 15, 2016	9/22/16 letter
6.	Would the addition of a restaurant /banquet hall constitute a “change of use” of this land?	Juliette Mount email 9/15/16 forwarded by Kluchman on 9/19/16	9/22/16 letter
7.	Can an existing APR contract be altered years after-the-fact to add a structure like these, as a “Retained Right” when the structures do not yet exist?	Juliette Mount email 9/15/16 forwarded by Kluchman on 9/19/16	9/22/16 letter