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August 30, 2016

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

RE: August 31, 2016 Meeting

Dear Members of the Task Force

In preparation for the August 31st meeting, and our review of the APR Subcommittee analysis, we wish to go on record as follows:

1. We would like to reiterate the comments we made at the August 25th meeting, especially the comments regarding the legal opinions provided by Town Counsel in Attorney Corbo's June 13, 2016 letter to the Board of Selectmen and the related emails and his responses to the question and answer session at the Selectmen's meeting on June 28th.
2. Within the APR Subcommittee analysis documents the various references to "Conservation Restrictions" and the policies of the Secretary of Energy and Environmental Affairs are irrelevant, as the APR instruments are not Conservation Restrictions nor were the APRs approved by the Secretary of Energy and Environmental Affairs (or their predecessors).
3. We think that you will find that APR #3 was approved by the Commissioner of Food and Agriculture to make sure the APR was enforceable without privity of contract or privity of estate, which are ordinarily required for restrictions on land to be enforceable. The lack of privity issue was resolved when the Commissioner of Food and Agriculture approved the APR as provided by M.G.L.A. 184 § 32. I have underlined the applicable language from the statute:

"No conservation restriction, agricultural preservation or watershed preservation restriction as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas or of a particular such area, and no preservation restriction, as defined in said section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include preservation of buildings or sites of historical significance or of a particular such building or site, and no affordable housing restriction as defined in said section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include creating or retaining or assisting in the creation or

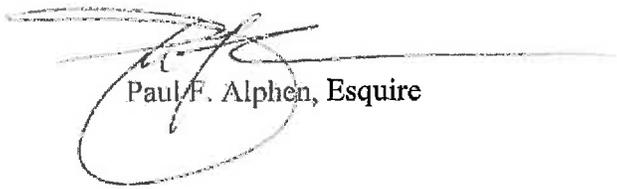
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retention of affordable rental or other housing for occupancy by persons or families of low or moderate income shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body or to any charitable corporation or trust with like purposes, or on account of the governmental body the charitable corporation or trust having received the right to enforce the restriction by assignment, provided (a) in case of a restriction held by a city or town or a commission, authority or other instrumentality thereof it is approved by the secretary of environmental affairs if a conservation restriction, the commissioner of the metropolitan district commission if a watershed preservation restriction, the commissioner of food and agriculture if an agricultural preservation restriction, the Massachusetts historical commission if a preservation restriction, or the director of housing and community development if an affordable housing restriction, and (b) in case of a restriction held by a charitable corporation or trust it is approved by the mayor, or in cities having a city manager the city manager, and the city council of the city, or selectmen or town meeting of the town, in which the land is situated, and the secretary of environmental affairs if a conservation restriction, the commissioner of the metropolitan district commission if a watershed preservation restriction, the commissioner of food and agriculture if an agricultural preservation restriction, the Massachusetts historical commission if a preservation restriction, or the director of housing and community development if an affordable housing restriction.” Mass. Gen. Laws Ann. ch. 184, § 32 (West)

I feel certain that you will confer with your own counsel regarding the interpretation of the law regarding this matter and the other outstanding legal issues that have been raised through the APR review process.

Thank you for this opportunity.

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


Paul F. Alphen, Esquire