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# Westford building plan tests farmland protection law



KIERAN KESNER FOR THE BOSTON GLOBE

**Ebrahim Masalehdan is seeking approval from Westford to build a restaurant on the Drew Garden agricultural site.**

**By Sacha Pfeiffer | GLOBE STAFF | SEPTEMBER 03, 2016**

WESTFORD — Like many other once-rural communities that have been steadily paved over to make way for houses, this former farming town was trying to preserve its dwindling agricultural heritage when it permanently protected a 9-acre fruit orchard two decades ago.

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It did so by spending more than a half-million dollars on so-called agricultural preservation restrictions, which declared that the land “shall remain in active agricultural use . . . in perpetuity.”

But the definitions of “agricultural” and “perpetuity” are now up for debate in Westford, alarming open-space advocates across the state who see the possibility of a barn-door-sized breach in Massachusetts’ first-in-the-nation farmland conservation program.

Westford is weighing whether to allow a large restaurant, banquet hall, and parking lot on the property, which has fallen into disrepair. The developer has a novel argument for why that would not violate the site’s protected status: The “farm-to-table” eatery would serve produce grown on the property, making it a legitimate “agricultural use” of the land, he says.

The proposal has infuriated some residents and others who fear making such an exception would raise doubts about whether spending taxpayer money to save farms truly guarantees permanent preservation. They also worry it could unravel other land protection deals covering tens of thousands of acres statewide.

The Westford case “has the potential of reducing confidence in the whole system” if the town allows commercial development on a site intended to be farmland forever, said William “Buzz” Constable, a lawyer who works with land trusts and is president of the Lincoln Land Conservation Trust, a local preservation group.

For Westford resident Marian Harman, the principles at stake are quite clear.

“This is one of the very few agricultural properties we have left,” she said, noting that Westford, now an affluent suburb about 30 miles northwest of Boston, was “mostly apple trees” when she moved there 40 years ago. “It would set a terrible precedent if a piece of conserved land like that were taken out of conservation.”

Westford history books describe a town so bountiful with orchards that it shipped thousands of barrels of apples to England some years. The town remained largely rural until the 1960s, when residential development began, and from 1985 to 1999 it experienced the second-greatest loss of agricultural land of any Massachusetts town, according to municipal documents.

As subdivisions sprouted, most of the orchards vanished, and only two large working ones remain in Westford today.



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1 of 5 free articles. [Subscribe now](#) The Drew Garden tract was purchased by its current owner in February.

In its glory days, the Drew Garden property, as the site at issue is known, was a thriving orchard with a farmstand and seasonal store selling locally grown products. Located on Boston Road just off Interstate 495, the site became protected in the late 1990s, when the town paid the landowner \$525,000 to purchase three agricultural preservation restrictions, or APRs, collectively preserving the whole property.

Considered a national model for protecting farmland, the state's APR program was established in 1979, making it the first in the country. It pays farmers the difference between the fair market value and agricultural value of their land; in exchange, farmers sacrifice some development rights to their properties.

The program gives farmers a financial alternative to developing their land, and the development restrictions remain in place under any subsequent owners.

Since it was placed in protected status, the Drew Garden site has changed hands twice and seen considerable neglect. The orchards are overgrown fields, the store an eyesore.

The current owner, Groton resident Ebrahim Masalehdan, bought the property in February for \$650,000. In April, Town Meeting voters narrowly rejected his restaurant proposal, 106 to 101.

Masalehdan has since revised the project to make it about a third smaller. That revision — a 19,000-square-foot complex with 311 seats and 110 parking spaces — will tentatively be voted on at a special Town Meeting in October.

“What I want to do is revitalize that farm, bring it to really, really good condition, bring in new orchards and crops, and put in a new greenhouse,”

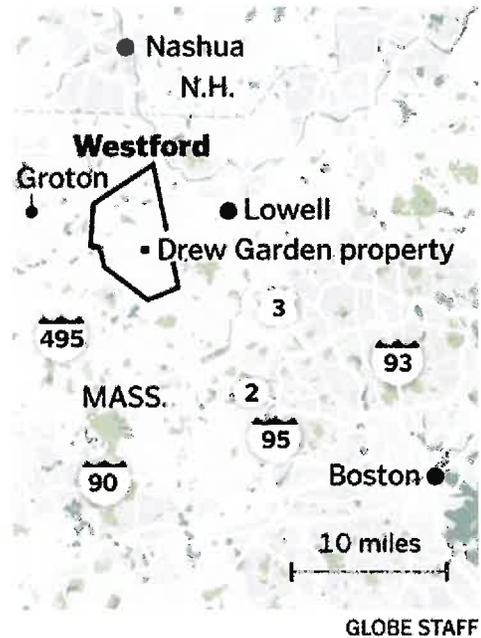
Masalehdan said. “It’s going to be absolutely nothing but a win-win situation for the town.”

The proposal has split town officials.

“The restaurant isn’t a perfect solution,” said Kelly Ross, chairman of the Westford Board of Selectmen, “but when I look at the choice we have, which is a restaurant with productive orchards or an abandoned building with weeds taking over everything, to me the restaurant option seems like the best available option.”

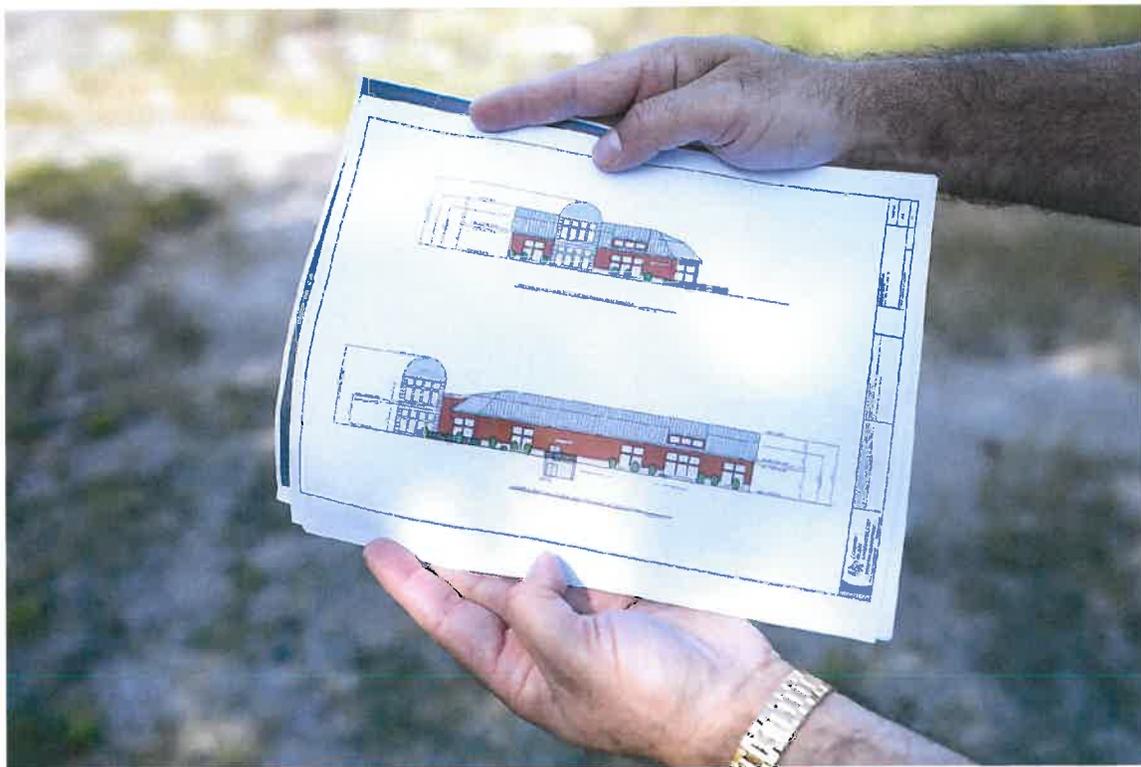
Selectman Don Siriani opposes the restaurant plan.

“Land is valuable and precious,” he said, “and once it has changed from agriculture use there’s really no going back.” If the restaurant is built, Siriani added, “other cities and towns will see a new avenue to make deals with land owners for major commercial projects.”



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Several conservation advocates said the Westford situation is unusual because the Board of Selectmen “holds” the farmland’s protective status, rather than the state or local conservation commission, as is typical. That gives the board an unusual amount of control over allowed uses and poses a potential conflict because selectmen may weigh economic factors rather than focus only on protecting natural resources, specialists said.

Westford Town Counsel Gregg Corbo did not respond to requests for comment from the Globe. But he issued a legal opinion in June saying the restaurant “would have a positive effect on the public good and yield a substantial benefit to the agricultural resources of the town.”



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**Ebrahim Masalehdan showed his proposed restaurant design.**

A two-thirds <sup>Comments</sup> vote of the Legislature is required to remove farmland from protection, but Corbo concluded Westford would not need state approval for the restaurant because the land would remain officially protected if the restaurant is built. He also concluded that a restaurant qualifies as an “agricultural use.”

“That’s just wrong,” said Boston tax attorney Stephen Small, a national authority on land protection. “A restaurant is not an agricultural use. A restaurant is a restaurant. A farm is an agricultural use.”

The Westford case, Small said, could serve as a cautionary tale by putting other communities “on alert that they need to pay very careful attention to what these [land protection] documents say.”

Since 1980, the state has spent roughly \$256 million to preserve more than 71,000 acres of Massachusetts farmland, and it controls about 880 agricultural preservation restrictions. State officials do not track how many additional acres are protected through town-held restrictions acquired with municipal money, such as in Westford.

The Massachusetts Department of Agricultural Resources said it is not aware of any restaurants permitted on farmland with state-controlled protective status.

State Agriculture Commissioner John Lebeaux said he would “consider the precedent that might be set before we decide if we’re going to take some formal position.” Ultimately, Lebeaux added, “it might be for a court to decide.”

*Sacha Pfeiffer can be reached at [pfeiffer@globe.com](mailto:pfeiffer@globe.com). Follow her on Twitter @SachaPfeiffer.*