

March 10, 2017

**Gregg J. Corbo**  
gcorbo@k-plaw.com

Hon. Andrea Peraner-Sweet and  
Members of the Board of Selectmen  
Westford Town Hall  
55 Main Street  
Westford, MA 01886

Re: Drew Farm APR Amendment  
Town Meeting Quantum of Vote

Dear Members of the Board of Selectmen:

I am writing to follow-up on my June 13, 2016 opinion concerning the procedures for amending one of the Agricultural Preservation Restrictions (“APR”) held by the Town on the above-referenced property, and more specifically, to address questions concerning the Town Meeting quantum of vote needed to authorize such an amendment. More specifically, I have previously opined that, to the extent that Town Meeting approval is needed to authorize the Board of Selectmen to amend an APR, such approval may be by simple majority vote. Certain opponents of the project, however, have since obtained an opinion that a two-thirds vote is required pursuant to G.L. c. 40, §15A because the amendment will result in “the change in use of a portion of the protected land.” See, September 13, 2016 Correspondence from Douglas A. Muir, Esq. to William and Marian Harmon.

In my opinion, G.L. c. 40A, §15A does not apply to an amendment of an APR, and, to the extent that Town Meeting approval is required to authorize such a transaction,<sup>1</sup> it is my opinion that the approval may be by simple majority vote. G.L. c. 40A, §15A, provides, in relevant part, as follows:

Whenever a board or officer having charge of land . . . constituting a whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose . . . such board or officer shall forthwith give notice of such determination to the . . . board of selectmen of the town. At any time after the receipt of such notice . . . the town by a two-thirds vote may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose . . . .

In this matter, 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.”

<sup>1</sup> Please be advised that, for the detailed reasons set forth in my June 13, 2016 opinion, I remain of the opinion that the proposed amendment to the APR does not constitute a disposition of the Town’s interest in land and that any Town Meeting vote on the subject is merely advisory.

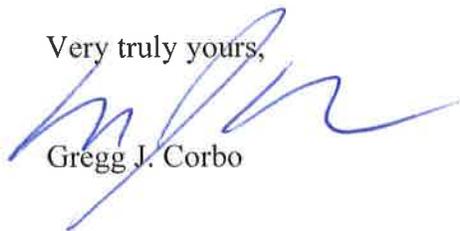
Hon. Andrea Peraner-Sweet and  
Members of the Board of Selectmen  
March 10, 2017  
Page 2

There is currently a proposal to amend the general conditions in one of these APRs to allow a use incidental to the other agricultural uses of the property. It is my understanding that, notwithstanding the proposed amendment, the Town will retain all of its rights under the three APRs, including the right to require that the property be used for agricultural use and its right of first refusal. In fact, it is my understanding that the proposed amendment is specifically conditioned on the owner restoring the land to active agricultural use.

In my opinion, the Town Meeting vote of October 21, 1996, authorized the Board of Selectmen to acquire an interest in the subject property for the purpose of controlling the development of the property, for ensuring that the property as a whole is used for agricultural purposes and for exercising a right of first refusal. This purpose does not change as a result of the proposed amendment, as the Town will retain all of these rights. Because the purpose for which the property is held by the Town will not change as a result of the proposed amendment, it is my opinion that G.L. c. 40A, §15A does not apply, and that any Town Meeting vote taken on the subject may be by simple majority.

Please refer to my correspondence of June 13, 2016 for a more detailed explanation of the law as it applies to the proposed APR amendment, as well as the other opinions I have provided on the subject, and if you have any additional questions, please do not hesitate to contact me.

Very truly yours,



Gregg J. Corbo

GJC/lem