

IN BOARD OF SELECTMEN
MONDAY, APRIL 8, 1996

Present: Chairman John C. Drobinski and Selectman Maryann K. Clark.

The statutory requirements as to notice having been met, the meeting was convened by Chairman Drobinski at 7:10 p.m. in the library of the Lincoln-Sudbury Regional High School; Selectman Lawrence L. Blacker arriving at 7:15 p.m.

Minutes

It was on motion unanimously

VOTED: To hold for approval the regular and executive sessions minutes of March 11, 1996, for additional review; to approve minutes of March 27, 1996, as submitted; to approve minutes of April 1 and 2, 1996, subject to changes.

Council on Aging - Van Donation

It was on motion unanimously

VOTED: To accept \$101.21 in miscellaneous donations for deposit into the Council on Aging Van Donation Account and to authorize the Council to expend same for purposes of operating and maintaining the Council on Aging vans.

D.A.R.E. Donation

It was on motion unanimously

VOTED: (1) To accept a donation in the amount of \$1,000 from the Sudbury Rotary Club to be deposited into the D.A.R.E. Program Account and expended under the direction of the Police Chief, and (2) To accept on behalf of the Town, a grant in the amount of \$12,000 from the Mass. Executive Office of Public Safety, to be used for the D.A.R.E. Program and also be expended under the direction of the Police Chief (\$6,000 received 12/95 and \$6,000 received 02/96).

Walkway Easement

It was on motion unanimously

VOTED: To accept on behalf of the Town, a Walkway Easement granted by Marilyn M. Hartke, as shown on a plan entitled, "Plan Showing Walkway Easement over land of Marilyn M. Hartke, 119 Fairbank Road, Sudbury, MA", dated July 11, 1995, and drawn by Town of Sudbury Engineering Department.

Wayland/Sudbury Septage Disposal Facility

The Board was in receipt of a letter dated March 28, 1996, from Town Engineer I. W. Place requesting notification to the Wayland Board of Road Commissioners and Operational Review Committee that the Sudbury Sanitary Landfill no longer has the capacity to accept sludge from the Septage Facility.

Accordingly, it was unanimously

VOTED: To cease acceptance of sludge from the Wayland/Sudbury Septage Disposal Facility at the Sanitary Landfill, effective April 15, 1996, and to notify said facility accordingly.

Article 20 - Release of Conservation Restriction

The Selectmen met with Laura McCarthy and Martha Keighley relative to the Agricultural Preservation Restriction (APR) on Parcels 020 and 300 on Town Property Map G09, who requested postponement of this article to the end of Town Meeting, due to the illness of their father (John Bartlett). Chairman Drobinski felt there was no problem in doing so, provided the Moderator was in agreement.

Laura McCarthy asked the Board of Selectmen what questions or concerns they had. Chairman Drobinski explained that the Board wanted the Bartletts to have the opportunity to present their view as to why the town should remove the APR. He stated further that the Board was not supportive of removing the restriction at this point in time.

Ms. McCarthy commenced by stating that in the past her father (John Bartlett) had attended several Planning Board meetings and pointed out to the Planning Board that they would have to take Parcel 100 into consideration when negotiating with the prior owners on developing Parcels 300 and 020 so that Parcel 100 would not be without access. This is not the case presently; the APR does not allow passage over Parcels 300 and 020. She continued: They have looked at the document in question and feel there are questions as to the type of restriction the document really is, whether it is legally enforceable, and believe that it would be in the best interest of the Town to consider a trade-off of releasing the restriction in exchange for six acres for the cemetery. If the article is not passed at Town Meeting, Ms. McCarthy added that they would continue to pursue the matter.

Bridget Hanson of the Conservation Commission questioned whether the land had been landlocked prior to the restriction. Ms. McCarthy stated that it had been landlocked. However, there had always been a verbal agreement between her grandfather, Webster Cutting, and Janet Howe, the owner prior to Peter Bowry, of Parcels 300 and 020, that any time the Cutting family wanted access to Parcel 100, consideration would be given to same. However, nothing was ever put in writing and now the problem has been left to their heirs to straighten out.

Ms. McCarthy explained as follows: Had they known that an agricultural restriction had been placed on the land, they would have worked with the Town on this matter. Prior owner, Peter Bowry,

had presented a plan to the Town wherein all of Parcels 300 and 020 would be developed. His first intention was to develop the land and not to put it into a restriction. That plan, however, was turned down by the Planning Board.

Ms. Hanson questioned how access could be had to the parcel, since the parcel southeast of same belonged to the Town (Mt. Pleasant Cemetery). Ms. McCarthy pointed out that a paper street known as "Peter's Way" and its continuation around the top of New Town Cemetery was to be the access.

Conservation Coordinator, Deborah Dineen, questioned whether giving the Bartletts a 50-foot wide access to their land would solve the problem. Ms. McCarthy added that they believed that a 50-foot right-of-way would only gain access for one house lot per the right-of-way laws, even though the parcel has the potential for more than one house. Ms. Dineen continued that the 50-foot right-of-way is the necessary width for a street which would allow access to more than one lot. Chairman Drobinski added that this width meets the Planning Board's requirements for a street and it would be more than enough width for access to a subdivision. Ms. McCarthy said that should the Town give them a 50-foot right-of-way, the Bartletts would not consider this a solution and would not gift the town the six acres for the cemetery. Ms. Dineen stated that the Commission was not concerned with the six acres, but rather with the APR staying in place.

Ms. McCarthy continued that the restriction was seen as a cloud on the title, and one problem is that it was never accepted by the State Agricultural Commissioner, making it inapplicable under certain APR laws (c.184, §32 and 33). Selectman Blacker expressed his reading of the statute as being the acceptance of the restriction by the Department of Food and Agriculture allows certain problems that might arise under §A, B and C to be barred, and the mere fact that the document was not signed does not make any difference. Ms. McCarthy then added that the fact that it was not signed by the State, but only by the Town, allows it to fall under different rules.

Selectman Clark interjected that under §32 the Town can release the restriction only if the Town can find that the land is no longer capable of being used for agricultural or horticultural purposes.

Conservation Commission member Hanson expressed the opinion that what she was hearing was not that the issue is access to Parcel 100, but that the Bartletts want the restriction removed from Parcels 020 and 300.

Ms. McCarthy stated that the restriction was not the only issue. Another was that when they bought Parcels 020 and 300 in order to protect access to Parcel 100, they had to purchase a lot with a house on it, but access to the lot and house is only by way of a driveway access easement. They would like to be able to clear that house in order to sell it but the lot and house fall under the restriction. They cannot sell the lot and house until the title is cleared. The Bartletts have been told that title insurance would probably not accept the title because of the restriction and questions arising from it. Ms. McCarthy stated that she has been told that even if this article passes, it may still require a judge to decide whether or not this is a traditional APR. She further stated that the Bartletts had no intention of

developing the land. They may even put their own self-imposed restriction on the land, but not until this matter is cleared up.

Commission Chairman Stephen Meyer interjected that the issue of the 50-foot right-of-way is really not an issue because the Town is prepared to give the Bartletts the right-of-way and it has nothing to do with the rest of the land. He continued that clearing the title was simply a matter of going back and having the appropriate document set up and signed, and that this process would be much simpler than going to Town Meeting and getting approval from the all the necessary boards. He explained to Ms. McCarthy that it is possible to clear the question of the ambiguous APR by putting a new APR on top of it and getting it signed by the State. That way you can clear the issue of the house as part of the rewrite that would supersede it. Ms. Dineen added that the Commission would be willing to give the Bartletts the 50-foot right-of-way because the strip that goes off the end of Peter's Way to parcel 100 is not part of the agricultural field. Ms. McCarthy asked how you put a new APR over the existing. Ms. Dineen said the new APR would be amended to address that portion within the 50-foot right-of-way. In essence, the Town would be willing to put on a new APR that would clear the title, give access to Parcel 100 and clear up the issues of the lot and house.

Selectman Clark expressed her concern as to why Peter Bowry and the other heirs of Janet Howe were not aware of the gentlemen's agreement, or if they were, why was the matter of this APR not discussed at the time of the transfer of the land to the Town, since the document was one of the many involved in the transfer. Ms. McCarthy said the problem was brought up, but was not acted upon. Ms. Clark asked if an offer had been made for the 50-foot right-of-way, to which Ms. McCarthy said no, because the Bowrys had no intention of selling the parcel until after the APR was imposed and they ran into difficulty with the Planning Board. Ms. Dineen interjected that during all the meetings on this matter with the Bowrys and Ken Moore, before the Planning Board, there had never been any mention of the 50-foot right-of-way. She stated that the original intent had been to lease the land to Paul Cavicchio for agricultural use, for the long term.

Selectman Clark ascertained from reading the document that the APR was "in perpetuity". Ms. McCarthy said that there was a question as to whether or not the document was in perpetuity because it had never been signed by the state. Ms. Clark explained her understanding of the state's process as being one of checking that all the requirements for the restriction are met. The fact that the Commissioner did not sign the restriction itself, is a scrivener's error and a minor item. The fact that the document was not signed does not obliterate the intent. In this case, the intent was to place a restriction on this land forever. Mr. Meyer added that even without the signature of the Agricultural Commissioner, the document stands for at least 30 years (2024) and is a 30-year document which is renewable. Ms. Clark stated that c.184, §27 points out this fact. Additionally, before the 30-year period expires, the Town can put a notice of extension on the document making it good for another 20 years. In this way, the "in perpetuity" which was intended, is maintained. Ms. McCarthy stated the restriction does not fall under c.184, §32 which gives it the right to be extended. Ms. Clark stated that if for some reason the restriction is compromised under §32, §27 maintains its integrity. Ms. McCarthy stated that she did not come with her documentation. However, the Bartletts had gone over the material with their attorney and were of a different opinion.

Chairman Drobinski noted that this matter could not easily be resolved and suggested that the article be indefinitely postponed. Ms. McCarthy suggested holding the article just until the end of town meeting. Chairman Drobinski was agreeable but admitted that the Board would not be changing its opinion in that period of time. Ms. McCarthy stated that she did not know if the Bartletts were going to change their opinion either and may prefer to have the article go before town meeting. Because the possibility of a new APR, which would supersede the original, had never been mentioned before, and since John Bartlett was not able to attend this meeting because of illness, Ms. McCarthy would like the time in order to find out whether or not a new APR resolving all the issues can be applied.

The Board of Selectmen agreed to move the article to the end of the calendar, but expressed that they would not be supporting it. Ms. McCarthy added that if the Town does not want to consider receiving six acres in exchange for releasing a restriction of which the Bartletts have good indication that the Bowrys did not want in the first place, then the Bartletts would also feel they have no obligation to offer any land to the Town in the future. They would prefer the Town Meeting decided this matter and not a couple of boards.

Ms. Clark expressed the opinion that if the article were indefinitely postponed, she would expect the Bartletts to restrict all the lands with the exception of the 50-foot right-of-way **and** grant land to the Town for the cemetery. Ms. McCarthy, in reply to Conservation Commission Meyer's comment that he understands the Bartletts' only requirement is the 50-foot right-of-way in order to reach Parcel 100, stated that without the restriction they could farm Parcels 020 and 300. According to Ms. McCarthy, one item in the restriction which they removed was the ability to build a house for a farmer, which is the norm when working the land. Ms. Dineen explained that it was the state which removed the ability to build a farm house, not the Town. She explained that it was removed because the State was finding that houses, which were built for agricultural staff (residential use), were putting the agricultural use in a secondary position and the market value of the agricultural land was much higher. The intent of these restrictions was to keep the market value of the agricultural land low in order to be able to maintain a stock of agricultural land in the State. She also reported that she had a draft with notes from the State that the housing item be taken out.

The Moderator advised that Town Meeting had a quorum and the discussion of this item ended with all agreeing to move this article to the end of the calendar.

There being no further business, the Board adjourned to the High School Auditorium to attend and participate in Town Meeting until its close.

Attest: _____

Steven L. Ledoux
Town Manager - Clerk