
TO: Sudbury Town Manager Andy Sheehan (*By Electronic Mail Only*)

FROM: Eric M. Barth, Esq.

RE: Termination of Tall Pines Easement

DATE: May 3, 2024

Question: How can a pedestrian access easement held by the Town be terminated?

Short Answer: In my opinion, based on the facts as I understand them and which are recited below, in order to terminate this pedestrian access easement, Town Meeting authorization is required together with the written consent of the owners of the land encumbered by the easement. Thereafter, the Select Board would need to vote to execute an instrument terminating the easement which would then need to be recorded in the Registry of Deeds.

Relevant Facts: In 1986, the developer of the Tall Pines Subdivision, prior to selling any individual lots, granted the Town a pedestrian access easement over Lots 5-11 (the “Easement”), as shown on the Definitive Subdivision Plan of Land entitled “Tall Pines Sudbury, Mass.” dated May 19, 1986, prepared by BSC – Bedford, and recorded with the Southern Middlesex Registry of Deeds as Plan No. 1426 of 1986 (the “Plan”) attached hereto. The stated purpose of the Easement is to “allow the public access to Lots A and B, said easement to be used for all purposes for which pedestrian access easements are primarily used in the Town of Sudbury”. The Easement was accepted by the Select Board pursuant to Section 3 of Article XII of the General Bylaws (the “Bylaw”), which provides:

The Selectmen may accept, from time to time, in behalf [sic] of the Town of Sudbury, gifts of land and interest in land for the following purposes: walkway and sidewalk purposes, storm drainage and above and below ground general drainage purposes, for slope maintenance purposes, for the purposes of rounding street corners and for any purpose approved by the Planning Board and shown on a plan approved by the Planning Board under General Laws, Chapter 41, Sections 81K to 81Y, inclusive.

Subsequent deeds to the encumbered lots do not make specific reference to the Easement, but rather state that the premises conveyed are “subject to and with the benefit of easements, rights, restrictions and agreements of record, if any there be, insofar as the same are now in force and applicable.”

The Easement abuts the Mass Central Rail Trail, which lies on property owned by the MBTA. It is our understanding that the Town now wishes to terminate the Easement, as the rail trail can serve the purpose of providing equivalent pedestrian access to the two conservation parcels in the Subdivision (Lots A and B).

Detailed Analysis

M.G.L. c. 40, §3 provides that “[a] town may hold real estate for the public use of the inhabitants and may convey the same by a deed of its selectmen thereto duly authorized...” The authorization required to allow the Select Board to hold or convey an interest in real estate comes from Town Meeting. See Bowers v. Board of Appeals of Marshfield, 26 Mass.App.Ct. 29, 32 (1983) (“The power to alienate and dispose of real estate lies with the inhabitants of the town acting at town meeting...”) Although the Select Board acquired the Easement pursuant to its authority under the Bylaw, the Bylaw provides only for *acceptance* of certain interests in real property, and does not provide authority to convey or dispose of interests in real property. Accordingly, for the Select Board to terminate the Easement, Town Meeting must first vote to authorize the termination pursuant to M.G.L. c. 40, §3.

Further, the Doctrine of Prior Public Use provides that “public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion.” Mahajan v. Department of Environmental Protection, 464 Mass. 604, 616 (2013) (quoting Robbins v. Department of Pub. Works, 355 Mass. 328, 330 (1969)). Because the Easement is held by the Town for the benefit of the public, and the termination of it changes its use, caselaw further confirms the requirement of Town Meeting authorization.

If Town Meeting votes to authorize the Select Board to terminate the Easement, the Select Board then can seek the written agreement of the owners of the lots encumbered by the Easement to terminate it. With those agreements in hand, the Select Board may vote to sign a termination of easement document which would then need to be recorded in the Registry of Deeds.

Please let me know if I can provide further information or answer further questions.

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