

Selectmen Instructions For Deed- and Conservation-Restricted Properties

Certain properties obtained over the years by the Town of Sudbury carry restrictions based on the deeding and/or Conservation efforts. Legal issues and transfer delays may be involved in assigning such land to Sudbury Housing Authority for use in its plan approved by the 2003 Sudbury Town Meeting for the SHA's development of 16 units in 7 buildings using a scattered site approach. The Sudbury Blue Ribbon Housing Site Selection Committee requested guidance from the Sudbury Board of Selectmen for excluding properties based on the legal issues. The following question was e-mailed to the Board of Selectmen on October 2, 2003, and the Selectmen Minutes and Town Manager's informational reply follow:

Subject: BRHSSC Request for clarification from Board of Selectmen

Good evening,

The Blue Ribbon Housing Site Selection Committee is studying town-owned properties to ascertain which are best suited for development by the Sudbury Housing Authority for the scattered site affordable housing rental units according to the plan ratified at Town Meeting 2003.

Beginning with the list of nearly 200 sites owned by the town, the Committee is first reducing the list by determining those sites that could not possibly be used for this type of construction. The next step will be to study the list of possible sites to see which are best suited.

The Committee is using the guidelines approved by the Board of Selectmen for evaluation criteria. The criteria are divided into three general categories: Physical, Legal, Intangible. In each grouping, properties are being rated on a scale from "no known issues" to "excluded". For example, sites much smaller than the size of the proposed buildings are "not possible" for Physical reasons. Physical characteristics are easiest to determine. They include building issues & costs, wetlands issues, geometry/size issues, existing structures, and access issues. A number of sites are excluded for combinations of these characteristics. Intangible issues include neighborhood and current use issues. For example, an isolated town-owned site with no other homes nearby would be excluded. A site such as the Sept. 11 Memorial Park would also be excluded based on current use (even if there were no other issues such as wetlands).

Legal issues include Ownership (is the land under town control); Zoning (no homes in the midst of commercial land); and Deed (is the property deeded for a specific use). At the Oct. 1 meeting, several Committee members expressed a desire for clarification from the Board of Selectmen on each of the following questions:

What would be considered sufficient to exclude a property based on Legal parameters? For example, there are properties under the Conservation Commission that would need legislative approval to be transferred for construction use. Many of these could be approached as friendly transfers. However, some properties have conservation restrictions that may have been

part of the deeding of the land to the town. At what point should a property be excluded from further consideration based on the intent under which it became town property? This point includes parcels under the Parks and Recreation heading as well. Should land deeded for P&R use be automatically excluded?

The Committee would appreciate guidance on where to draw the line, especially where deeded intents are concerned. The Physical parameters are well in hand, and the Intangible (also called "Other") seems well in hand as well, but it is unclear how to rate the effect of the deeper Legal issues. Direction from the Board of Selectmen could help our effort to meet the short deadline by removing the potentially lengthy discussions for properties with these issues. Thank you for considering these issues,

Lydia Pastuszek
James Gardner
BRHSSC Co-Chairs

The Board of Selectmen considered the issue at their meeting on October 7, 2003. The following is an excerpt from the minutes of that meeting:

Blue Ribbon Housing Site Selection Committee

Town Manager Valente stated the Blue Ribbon Housing Site Selection Committee has asked for the Board's opinion on what is sufficient cause to exclude a property based on legal parameters. For example, if going to the State Legislature is necessary to gain access to the property, should that be criteria for excluding that property from the list of viable properties? She stated some sites have deed restrictions, conservation restriction, recreation restrictions, etc.

Selectman O'Brien opined the Committee should exclude or place at low priority any property that would require state legislative action, at least for this year. He opined further there are numerous properties that would be clear. Selectman Drobinski agreed, stating conservation restrictions are difficult to work around. Chairman Roopenian opined any property that had significant potential multiple uses (in the future) should be avoided as well. For clarification, Ms. Valente opined the gravel pit, for example, could be used a multiple use site, but for now the Blue Ribbon Committee was looking for feedback on impediments.

It was on motion unanimously

VOTED: To advise the Blue Ribbon Housing Site Selection Committee that if any legal obstacles exist with regard to a particular property for consideration, that property should be excluded from the Committee's list of potential housing sites.

Following the Selectmen's meeting, the BRHSSC received the following e-mail from Town Manager Maureen Valente:

Good afternoon Committee members:

You had posed a question to the Board as to their opinion about properties as follows: "What would be considered sufficient to exclude a property based on Legal parameters?"

Tuesday night the Selectmen voted that for the purposes of the mission you were given, the BRHSSC should try to include only those parcels that do NOT have legal complications that would delay transfer to the SHA.

So this would, for example, eliminate those parcels that would need an act of the state legislature to change the deed or legal restriction on use that might be associated with the parcel, because this would take so much extra time to obtain legislative action. It may not be obvious to the committee when a use designation or restriction could be changed by Town Meeting alone and when a follow up special act/home rule petition would be necessary. Debbie Dineen should be able to identify those conservation parcels that would need an act of the legislature, and could give you a written assessment of the statute that would apply. Others (or any Debbie cannot so identify) you may ask Jody Kablack to submit to Town Counsel's office for an opinion in order to document the process that would be required. I believe he did opine last year that the Longfellow site would require such an act of the state legislature as well as Town Meeting action. But of course we trying to document all such information for future reference, so reaffirming the Longfellow opinion and getting such opinion on other sites is important to do, and Jody can coordinate getting all those together you might want and submitting them to Paul Kenny for rulings.

While the Board only voted this guideline for the short-term mission the BRHSSC was given, I believe the Board would not be inclined to want to change any of these legal restrictions over the long term either, as it sends the wrong message to people who might consider selling or giving interests in land in the future if they see town trying to change the use of a property from what the donor/seller intended. However, they did not actually vote a long-term policy, only that they would like to see the final list you prepare indicate parcels that would be legally clear for Town Meeting to transfer the ownership to Housing Authority and thus quickly available.

Please let me know if this reply does not sufficiently address your inquiry,

Regards, Maureen

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