



Planning Department

FYI

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MEMORANDUM

To: Garry Rhodes, Building Commissioner **Date:** September 22, 2005
From: Roland Bartl, AICP, Town Planner *R.B.*
Subject: 484 Great Road (Buxton)

The Town of Acton through its Board of Selectmen holds a conservation restriction on land at 484-486 Great Road (the former Buxton property). In fact there are two restrictions. The first, dated 1/12/1978, has apparently not been recorded. The second, dated 12/11/1978 has been recorded in the Middlesex Registry of Deeds, BK 13615, PG 339 ff, and is signed by the Secretary of Environmental Affairs. For the purpose of this review, I have relied on the recorded conservation restriction. It delineates three restricted areas - Areas 2, 3, and 4. The restriction appears to apply equally to all three areas. There is also a plan that shows the area delineation. It is recorded in the registry as plan No.1513 of 1978 (stamped on 12/28/1978). Westchester Co., Inc. has inquired about the uses that might be allowed under the conservation restriction. Below are my comments following the list of inquiry in the 6/28/05 letter from Isabella Choate.

1. Can the unrestricted portion of the land, Area 1, be developed under Ch. 40B?
I cannot see any evidence that the conservation restriction affects the types of use allowed on Area 1. However, the configuration of the unrestricted land might create some practical limitations. Its development or re-development is subject to applicable laws and regulations, including M.G.L. Chapter 40B. The location is not within walking distance to any of Acton's village centers or Kelley's Corner, where higher residential densities would be desirable. But it is along the Great Road corridor where residential and commercial uses mix freely. This location is perhaps not a top-choice for a 40B project, but it does not seem inconsistent with the Town's planning objectives either.
2. How do the two conservation restrictions relate to each other?
As stated above, I have relied on the recorded restriction, which is signed and dated 11 months after the unrecorded restriction, and which bears the Environmental Secretary's signature. I am assuming that this later recorded restriction governs Areas 2, 3, and 4. Ultimately this is a question for an attorney.
3. Can the parcel be subdivided into two new lots using the entire frontage?
On the face of it there is enough frontage on Great Road for two lots. The question relates to case law that has examined lot access over street frontage. In order for the division of land not to be deemed a subdivision (rather than ANR lots) within the meaning of M.G.L. Chapter 41, such access must be possible; it cannot be illusory in nature. I think all these cases have assumed vehicular access as a qualifying standard. It seems that, as written, the restriction on the land makes access for two lots illusory since Area 2 occupies all but +/-25 feet of the Great Road frontage.

However I am not aware of case law that has examined this particular circumstance. Perhaps Town Counsel can shed light on this if necessary.

Looking at it differently: There are now two lots, each with a residence on it. One has all the land's frontage on Great Road, the other has none. They share a common driveway. A reconfiguration of these two lots would simply alter an existing nonconforming situation for another that is equally or less nonconforming. They could continue to share the driveway.

4. Can the restricted land, specifically Areas 2 and 3, be used for subsurface wastewater disposal facilities?

The Restriction prohibits among other things

- the placement of structures of all kinds and utilities above ground;
- the removal or destruction of trees, shrubs or other vegetation except for proper forestry or landscape practice or to improve the scenic view;
- excavation, dredging and removal of mineral substances so as to affect the surface of the land;
- use of the land except for agriculture, forestry, and outdoor recreation purposes.

Further, the restriction is written to be consistent with M.G.L. Ch. 184, S. 31-33 and its intended purposes, and it lists those purposes including watershed protection.

I conclude that a subsurface wastewater disposal system on the subject land areas seems to be inconsistent with the intent of the conservation restriction as presently written and recorded. The Selectmen could opt to amend the restriction, to allow such a facility. I am not familiar with the legal and procedural steps required for such an amendment. If we assume that the principal purpose of the restriction is to preserve the land for open space, wildlife habitat, and the enjoyment by the residents of Acton, then a surface of an underground wastewater disposal facility can fulfill that purpose if properly finished and graded, and left to re-grow as a natural meadow. The emphasis on watershed protection under Ch. 184 may mean that effluent must be treated to higher purity than a normal septic system would provide.

5. In allowing public access to the restricted land, does the conservation restriction designate specific trails or ways, and does it require public access over the unrestricted land?

I do not see anything in the restriction that limits access to specific trails or ways on the restricted land. Likewise, I do not see anything in the restriction that extends public access rights to the unrestricted land. Should the Board of Selectmen be inclined to modify the restriction, I would recommend retention of the unrestricted nature of public access, and I would recommend inclusion of a public access easement over the unrestricted Area 1 to connect Area 2, with Areas 3 and 4, and to gain public access from Great Road to Areas 3 and 4. There is a Town-owned pedestrian right of way from Beechnut Street (in the Acorn Park subdivision) to Area 4. Area 4 also abuts Town of Concord watershed land around Nagog Pond. This land is not open to the public.

Cc: Planning Board