

Christine Joyce

10/6 (10)

From: Don Johnson
Sent: Monday, September 29, 2003 8:47 AM
To: Christine Joyce
Cc: John Murray
Subject: FW: Acton/Bertolami: Proposed Contract



Contract.doc (16 KB)

Chris:

Please put this on the 10/6 Agenda, as part of the Special Town Meeting discussion under Selectmen's Business.

-----Original Message-----

From: Don Johnson
Sent: Monday, September 29, 2003 9:46 AM
To: Board of Selectmen
Subject: FW: Acton/Bertolami: Proposed Contract

I asked Counsel to draft an agreement with Mr. Bertolami that would insure the preservation of the Station Master's House, if the zoning change passes. This is his draft. Please let me know if you have any issues with the content. I plan to present it to Mr. Bertolami later this week and to include it for the Board's consideration as you evaluate your position with respect to the Article.

Regards,
Don

-----Original Message-----

From: Stephen Anderson
Sent: Saturday, September 27, 2003 5:51 PM
To: Don Johnson; Garry Rhodes
Subject: Acton/Bertolami: Proposed Contract

<<Contract.doc>>

Dear Don and Garry:

As we discussed on Friday, attached is a draft of a simple Contract to pin Bertolami down on the relocation of the Station Master's House in the event the re-zoning article passes.

Garry: Please check the owner, address, and parcel info.

Don: Let me know if you have any comments.

Stephen D. Anderson
ANDERSON & KREIGER LLP
43 Thorndike Street
Cambridge MA 02141-1764
Phone: 617-252-6575
Fax: 617-252-6899
e-mail: sanderson@andersonkreiger.com
www.andersonkreiger.com

This electronic message contains information from the law firm of Anderson & Kreiger LLP which may be privileged. The information is intended to be for the use of the addressee only. If you are

Christine Joyce

From: Don Johnson
Sent: Monday, September 29, 2003 9:00 AM
To: Christine Joyce
Cc: John Murray
Subject: FW: STM Article

Chris:
Please put in 10/6 agenda packet.

-----Original Message-----

From: Trey Shupert
Sent: Saturday, September 27, 2003 3:11 PM
To: Peter Ashton; Don Johnson; Board of Selectmen
Subject: RE: STM Article

I agree with Peter.

Getting something in writing will be good on the stationmaster's house, however, I'm more concerned about the use of the Carriage House. Let's keep in mind that the owner and applicant buys depressed properties and builds car dealerships. Last year he presented a plan for a "classic car" dealership with 20 to 30 outdoor storage parking spaces. He now says he wants to expand the auto detailing business that is currently housed next door. He should not have any problem then with putting it in writing what he will do with the carriage house.

If there is any confusion or lack of clarity or potential loopholes in his commitment(s), then I will not support the article.

Trey

----- Original Message -----

From:
To: djohnson@acton-ma.gov; BOS@acton-ma.gov
Sent: 9/27/2003 2:07:12 PM
Subject: STM Article

Don:

After reading the memo from Garry Rhodes in our packet this weekend regarding the inability of the proponent to find an allowed use for the carriage house (at this point), I would like to make two suggestions that I feel are critical before I will support the article at the STM.

The first is that I would like to see IN WRITING from the proponent his guarantee that the station master's house will be moved, preserved and maintained if the article passes.

Second I would like a determination of what the use will be for the carriage house that MEETS zoning requirements.

This may be best kept for discussion at our next BoS meeting, because if other Board members agree then I would suggest we contact the proponent in this regard.

Peter

Christine Joyce

From: Don Johnson
Sent: Monday, September 29, 2003 9:01 AM
To: Christine Joyce
Subject: FW: STM Article

Chris:
Please put in 10/6 agenda packet.

-----Original Message-----

From: Peter Ashton
Sent: Saturday, September 27, 2003 2:06 PM
To: Don Johnson; Board of Selectmen
Subject: STM Article

Don:

After reading the memo from Garry Rhodes in our packet this weekend regarding the inability of the proponent to find an allowed use for the carriage house (at this point), I would like to make two suggestions that I feel are critical before I will support the article at the STM.

The first is that I would like to see IN WRITING from the proponent his guarantee that the station master's house will be moved, preserved and maintained if the article passes.

Second I would like a determination of what the use will be for the carriage house that MEETS zoning requirements.

This may be best kept for discussion at our next BoS meeting, because if other Board members agree then I would suggest we contact the proponent in this regard.

Peter

Red line version

CONTRACT

THIS AGREEMENT is made this _____ day of _____, 2003, by, between and among Leo Bertolami and Jane A. Bertolami, Trustee(s) of the Hawthorne Realty Trust, a Massachusetts realty trust created under a Declaration of Trust dated July 8, 1992, and recorded in the Middlesex South Registry of Deeds at Book _____22201, Page _____310, with its principal place of business at 6 Proctor Street, Acton, MA (hereinafter referred to as the "Trust"), individually and on behalf of itself the Trust and its trustees, beneficiaries, successors and assigns, and the Town of Acton, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (hereinafter referred to as the "Town").

WHEREAS the Trust owns the real property located at and known as 111 Great Road, Acton, MA, which is shown as Parcel 28 on Assessors' Map G-4 ("Parcel 28").

WHEREAS the Trust also owns the real property located at and known as 107 Great Road, Acton, MA, which is shown as Parcel 28-1 on Assessors' Map G-4 ("Parcel 28-1").

WHEREAS Parcel 28 is adjacent to parcel 28-1.

WHEREAS on Parcel 28-1 is situated the historic Station Master's House, built by station agent Arthur Raynor c. 1910.

WHEREAS the Trust seeks to relocate the Station Master's House from Parcel 28-1 to Parcel 28.

WHEREAS to enable the relocation of the Station Master's House from Parcel 28-1 to Parcel 28, the Town of Acton will hold a Special Town Meeting on October 20, 2003, to see if the Town will vote to amend the Acton zoning map, Map No.1, by re-zoning Parcel 28 from Limited Business District (LB) to East Acton Village District (EVA).

WHEREAS the Supreme Judicial Court has held in Durand v. IDC Bellingham, ___ Mass. ___, ___ (2003), that the common practice of "conditioning otherwise valid zoning enactments on agreements reached between municipalities and landowners that include limitations on the use of their land or other forms of mitigation for the adverse impacts of its development" does not constitute illegal contract zoning.

NOW THEREFORE, for one dollar and other adequate consideration the receipt and sufficiency of which are hereby acknowledged, the Trust and the Town agree as follows:

1. In the event that Parcel 28 is re-zoned from Limited Business District (LB) to East Acton Village District (EVA) at the October 2003 Special Town Meeting, the Trust agrees as follows:

- a. Within 60 days after the Attorney General approves the re-zoning of Parcel 28, the Trust shall apply for all necessary governmental licenses, permits, approvals and other relief required to relocate the Station Master's House from Parcel 28-1 to Parcel 28, including without limitation applications for zoning permits and construction permits (collectively referred to as "Governmental Approvals").
- b. Within 90 days after receiving all necessary Governmental Approvals, the Trust shall perform and complete the relocation of the Station Master's House from Parcel 28-1 to Parcel 28 in accordance with said Governmental Approvals, and shall thereafter maintain the Station Master's House in good repair and in compliance with federal, state and local standards and requirements governing historic structures.
- c. The Trust shall comply with all applicable governmental laws, bylaws, rules, statutes and regulations, relating to its relocation of the Station Master's House from Parcel 28-1 to Parcel 28.
- d. After the Station Master's House is relocated to Parcel 28, in the absence of substantial damage to the relocated Station Master's House from a fire or other casualty, the Trust shall not for a period of at least ~~twenty~~fifty years apply for any demolition permit the purpose of which is to demolish or substantially alter the Station Master's House; This restriction shall run with the land for the benefit of the Town and the Trust shall execute and deliver a to the Town Manager all necessary recordable Notices of this covenant to the Town restriction for recording in the Middlesex South Registry of Deeds pursuant to M.G.L. c. 184, § 27.
- e. Within 60 days after the Attorney General approves the re-zoning of Parcel 28, the Trust shall cause its counsel to execute and deliver to Town Counsel for filing in court a Stipulation of Dismissal with prejudice and without costs of its appeal in the matter *Hawthorne Realty Trust v. Acton Zoning Board*, Middlesex Land Court No. 289465.
- f. The Trust agrees to restrict the use of the carriage house situated on Parcel to the following uses: . This restriction shall run with the land for the benefit of the Town for a period of at least fifty years, and the Trust shall execute and deliver to the Town Manager all necessary recordable Notices of this restriction for the benefit of the Town for recording in the Middlesex South Registry of Deeds pursuant to M.G.L. c. 184, § 27.
- fg. In the event that the Trust fails to perform any of the foregoing in a timely manner, the Trust consents to jurisdiction of the Middlesex Superior Court in an action by the Town for specific performance of the Trust's obligations hereunder, and the Trust acknowledges that there is no adequate remedy at law with respect

thereto.

2. In return for the foregoing undertakings, the Board of Selectmen of the Town of Acton agrees to recommend in favor of the re-zoning of Parcel 28 from Limited Business District (LB) to East Acton Village District (EVA) at the October 20, 2003, Special Town Meeting.

3. The Trust acknowledges and understands that the recommendation of the Board of Selectmen is not binding upon Town Meeting and that a 2/3 affirmative vote of Town Meeting is required for the re-zoning article to pass.

4. The Trust further acknowledges and understands that the approval of the Attorney General is required before the re-zoning article can take effect.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed

this ____ day of _____, 2003.

Town of Acton, Massachusetts,
By its Board of Selectmen,

Walter H. Foster, Chairman

Peter K. Ashton

William H. Shupert, III

F. Dore' Hunter

Robert A. Johnson

Hawthorne Realty Trust

By: Leo Bertolami, Trustee

TOWN ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

On the ____ day of _____, 2003, before me personally appeared the above named members of the Board of Selectmen of the Town of Acton the Massachusetts Municipal Corporation named in the attached instrument, and as such were authorized to execute this instrument on behalf of the Town of Acton, Massachusetts.

Notary Public
My Commission Expires: _____

TRUST ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF MIDDLESEX

I CERTIFY that on _____, 2003, Leo Bertolami, Trustee, personally came before me and acknowledged under oath that he

- (a) is the Trustee of the Hawthorne Realty Trust named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the Trust, and
- (c) executed the instrument as the act of the Trust

Notary Public
My Commission Expires: _____