

Don Johnson

From: Stephen Anderson
Sent: Tuesday, January 27, 2004 12:23 PM
To: Don Johnson
Subject: ACTON/Buxton: Conservation Restriction

Dear Don:

I have reviewed the Conservation Restriction granted by Harold A. and Devena E. Buxton to the Town of Acton dated December 11, 1978, recorded in the Middlesex South Registry of Deeds at Book 13615, Page 339, as it relates to the request of Alicia Donahue to "build a stable, indoor riding ring, and outdoor riding ring," allegedly within the "agricultural exception" to the Conservation Restriction. I respectfully disagree that Ms. Donahue's proposed structures fit within any "exception" to the Conservation Restriction. Rather, I believe the proposed structures are squarely prohibited under the Conservation Restriction.

This Conservation Restriction was granted "as a gift," lasts "in perpetuity," and "is intended to retain said parcel predominantly in its natural, scenic and open condition..." The Conservation Restriction expressly provides that:

A. The Grantors, their successors and assigns shall neither perform nor permit others to perform any of the following:

1. Construction or placing of any buildings, mobile homes, roads, signs, bill boards or other advertising, utilities or other structures on or above the ground;

This prohibition on buildings and structures is absolute and operates independently from the additional restriction set forth in Section A5 which provides as follows:

A. The Grantors, their successors and assigns shall neither perform nor permit others to perform any of the following:

...

5. Use of said land except for agricultural, forestry or outdoor recreational purposes permitting said land to remain predominantly in its natural condition;

Thus, Section A5 prohibits any "use of the land" (in addition to the prohibition on buildings and structures in Section A1), except for "agricultural, forestry or outdoor recreational purposes permitting said land to remain predominantly in its natural condition" (emphasis added). Accordingly, while use of the land for agricultural purposes is permitted, any structures (even if used for agricultural purposes) are prohibited.

The restriction "shall be administered by the Board of Selectmen" In the event the Selectmen have any questions regarding the above advice, I would be pleased to discuss this with them.

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

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not the addressee, note that any disclosure, copy, distribution or use of the contents of this message is prohibited.

ALICIA A. DONAHUE
60 Sanderson Road
Littleton, MA 01460
978-486-9450

January 5, 2004

VIA HAND DELIVERY

Mr. Don P. Johnson
Town Manager
472 Main Street
Acton, MA

RE: 484-486 Great Road

Dear Mr. Johnson:

Thank you for agreeing to meet with me today and for your letter of December 5, 2003. I thought that I would outline in writing the proposed use of the land and demonstrate how it is in conformity with the conservation restriction presently in place.

As you know, the restriction was put in place in 1978 by the Buxtons and approved by the Board of Selectman. I understand from speaking with the town engineer who drafted the recorded plan, that the Buxtons did not want to pay the taxes associated with such a large parcel which was then in a business zone. The conservation restriction prohibits many activities so that the grantors, the Buxtons, could not enjoy a reduced tax rate and then sell the land at full commercial value. However, the conservation restriction does permit certain activities including but not limited to:

1. Removal of trees, shrubs and other vegetation for proper forestry, landscape practices, and to improve the scenic view;
2. Use of land for agricultural, forestry or outdoor recreational purposes permitting said land to remain predominately in its natural condition.

As we have discussed, I have proposed to use the land as a commercial horse boarding and training facility. The facility would include an approximately 40 ft. x 156 ft. stall barn, an approximately 80 ft. x 200 ft. indoor riding facility, an outdoor ring, small storage facilities for hay and shavings and outdoor paddocks. It would be a boarding facility for approximately 20 horses. The use of the land is consistent with the definitions of agriculture set out in the Town of Acton Bylaws, M.G.L. c. 128 section 1A and in Steege v. Board of Appeals of Stow, 26 Mass. App.Ct. 970 (1988). An agricultural use of this parcel is permitted as of right in the zoning district in which the lot is located without a special permit.

Mr. Don P. Johnson
January 5, 2004
Page Two

Agriculture is a protected activity in Massachusetts. The activity is exempt from certain wetlands protection requirements and the Commonwealth subsidizes restrictions in favor of the continuation of affordable farming (M.G.L. c. 184 sec. 31-33).

In addition, M.G.L. c. 40A section 3 prohibits the enactment of zoning bylaws and ordinances prohibiting, unreasonably regulating or requiring a special permit for the use of land for the primary purpose of agriculture. The statute was enacted "to counteract the increasingly restrictive effect of various zoning by-laws upon the conduct and expansion of agriculture with the State." Cumberland Farms of Conn., Inc. v. Zoning Bd. Of Appeal of N. Attleborough, 359 Mass. 68, 73-74 (1971).

While the statute, bylaws and cases broadly define agricultural pursuits, zoning cases illustrate the meaning of agriculture in the context of proposed uses. For example, in Cumberland, the board's refusal to permit the construction of a new barn in "the New England climate...may effect prohibition of dairy land expansion." Construction of the new barn could not be prohibited by the zoning bylaw, only reasonably regulated to assure no material diminution of the protection provided by section 3 for the continued use of land for agriculture.

In Prime v. Zoning Bd. of Appeals of Norwell, 42 Mass.App.Ct. 796 (1977), the abutters challenged the construction of a farm stand for the sale of produce grown on the property as it was not "essential" to the operation of a farm. The decision relied on Cumberland in rejecting the abutters' argument in stating that "all agriculture conducted for profit is commercial in some degree." While the Buxton restriction prohibits buildings, it does not prohibit buildings used for agricultural purposes and an agricultural use without buildings is impossible. Any other interpretation would defeat the statutory protection afforded to farms and this restriction is statutory.

Finally, boards cannot refuse a permit merely because the board would prefer another use or no use. See Cumberland and Kirker v. Board of Appeals of Raynham, 33 Mass.App.Ct. 111 (1992).

Understanding that "agriculture" as defined and interpreted means and includes the boarding and training of horses for commercial purposes and attendant structures necessary for it as an agricultural pursuit, the use of this land as proposed is reasonable. To deny the proposed use would be a breach of the agreement entered into between the town and the Buxtons. The interpretation in your letter: that Section A1 defeats an exception set forth in A5 would render A5 as a nullity and is against general principals of contract law and interpretation.

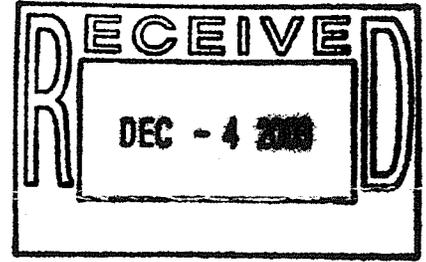
Thank you for your consideration and time. I look forward to working with you.

Very truly yours,



Alicia A. Donahue

Alicia Donahue
60 Sanderson Road
Littleton, MA 01460
978-486-9450



December 6, 2003
VIA HAND DELIVERY

Mr. Don P. Johnson
Town Manger
472 Main Street
Acton, MA 01710

RE: 484 - 486 Great Road
Acton, MA

Dear Mr. Johnson:

I am writing to inquire about the conservation restriction on 484 Great Road. I believe that Tom Tidman of the Conservation Commission brought my inquiry to your attention shortly after I met with him on November 20, 2003.

As you know, the land is under a conservation restriction given by the Buxtons to the Town of Acton in 1978. I have enclosed a copy for your review and other documents I presented to the Conservation Commission last night. I propose to purchase the property and exercise the agricultural exception on the restriction and build a stable, indoor riding ring and outdoor riding ring. "Agriculture" as defined by the Massachusetts General Laws and the Acton By-Laws includes commercial boarding of livestock. I have asked an attorney to review it and he agrees that the use as a boarding facility is consistent with the exception as it is consistent with the definitions of agriculture.

I have requested that the Conservation Commission review this. The Conservation Commission has deferred to town counsel's opinion as to whether this use would be permitted under the restriction. As my purchase is contingent on using the property for a commercial boarding facility, could you kindly forward this inquiry to town counsel for an opinion?

I would be willing to remit payment for reasonable expenses associated with hiring town counsel for an opinion on this. If you have any questions, please do not hesitate to call me on my cell phone at 617-417-0773.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alicia Donahue".

Alicia Donahue

cc: Tom Tidman

Enclosures

Andrea Ristine

From: Don Johnson
Sent: Tuesday, December 09, 2003 1:15 PM
To: Christine Joyce
Cc: Tom Tidman; Andrea Ristine
Subject: Buxton Property Conservation Restriction

Please put this on letterhead to Ms. Donahue.

Dear Ms. Donahue:

We have reviewed your letter of December 6, 2003, (with attachments) regarding a Conservation Restriction given to the Town of Acton by Mr. and Ms. Harold A. Buxton in 1978.

After careful consideration, we conclude that, while certain types of agricultural uses are permitted under paragraph A.5., such uses are restricted by paragraph A.1. and may not include "Construction or placing of any buildings, mobile homes, roads, signs, bill boards or other advertising, utilities or other structures on or above the ground." This restriction clearly prohibits the construction and operation of the facilities you describe in your letter.

Thank you for the opportunity to review this question and provide the Town's position in this matter.

Cc: Conservation Commission
Board of Selectmen

Written by Don P. Johnson
12/9/03



Resent
12/29/03

TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9612
Fax (978) 264-9630

FILE COPY

Don P. Johnson
Town Manager

December 9, 2003

Ms. Alicia Donahue
60 Sanderson Trail
Littleton, MA 01460

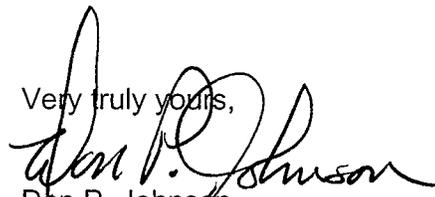
Dear Ms. Donahue:

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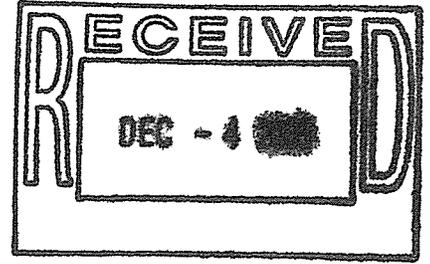
Very truly yours,



Don P. Johnson
Town Manager

Cc: Conservation Commission
Board of Selectmen

Alicia Donahue
60 Sanderson Road
Littleton, MA 01460
978-486-9450



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472 Main Street
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Sincerely,


Alicia Donahue

cc: Tom Tidman

Enclosures

BK13615 PG030

1719
14

Conservation Restriction

REC'D 8-28-99 2:40 PM ZEPH

Harold A. Buxton and Devina E. Buxton, ^{husband and wife} of Acton, Middlesex County, Commonwealth of Massachusetts, for no consideration but as a gift grant to the Town of Acton, a municipal corporation of Middlesex County, Commonwealth of Massachusetts, (address of grantee: Town Hall, Acton, Massachusetts 01720) and its successors and assigns, with quitclaim covenants, a conservation restriction in perpetuity on the following described premises:

Three areas shown on a plan entitled "Compiled Plan of Land in Acton Owned by Harold A. & Devina Buxton" dated November 30, 1978 by the Town of Acton Engineering Department to be recorded herewith.

That area shown on said plan as Area 2 containing 29,958 sq. ft. Beginning at a point N 54-38-05W a distance 43.00 feet from a state highway bound on the southerly side of Great Road as shown on said plan, thence;

S 34-46W along a stone wall and land of C.B.C. Realty of Acton a distance of 197.50 feet, thence;

N 33-48-46W a distance of 176.49 feet, thence;

N 05-09-33E a distance of 66.34 feet, thence;

N 50-26-04E a distance of 80.00 feet, thence;

S 54-38-05E by Great Road a distance of 175.58 feet to the point of beginning.

Also those areas shown as Areas 3 and 4 on said plan containing a total of 13.26 acres more or less. Beginning at a point on the stone wall land of Elwood S. and Jean E. Wood, a distance of 137.43 feet from the southerly side of Great Road, thence;

S 33-48-46E a distance of 34.94 feet to a stone wall, thence;

S 50-55-49W along a stone wall and by land of Glenna M. Kidder a distance of 152.23 feet, thence;

S 45-02-53E by land of Kidder a total distance of 80.90 feet, thence;

SEE 1573 13615 399

DK 13615 P6340

E 16-17-41W a distance of 180.75 feet, thence;

S 34-22-00E a distance of 120.00 feet to a stone wall, thence;

S 35-38W along a stone wall and land of C.B.C. Realty of Aston a distance of 592.50 feet, thence;

S 35-14W along said wall and land of C.B.C. Realty a distance of 876.00 feet, thence;

S 89-25W along a stone wall and land of Town of Concord (Nagog Reservoir) a distance of 76.00 feet, thence;

N 34-21W along said land of Concord a distance of 468.00 feet to a corner in a stone wall, thence;

N 57-35E along a stone wall and land of Elwood S. and Jean E. Wood a distance of 592.00 feet, thence;

N 08-30W along said wall and land of Wood a distance of 167.00 feet, thence;

N 34-43E along said wall and land of Wood a distance of 227.00 feet, thence;

N 24-53E along said wall and land of Wood a distance of 282.00 feet, thence;

N 60-15E along said wall and land of Wood a distance of 178.00 feet, thence;

N 54-40E along said wall and land of Wood a distance of 380.57 feet to the point of beginning.

The terms of this Conservation Restriction are as follows:

- a. The Grantors, their successors and assigns shall neither perform nor permit others to perform any of the following:
 1. Construction or placing of any buildings, mobile homes, roads, signs, bill boards or other advertising, utilities or other structures on or above the ground;
 2. Dumping or placing of soil or other substance on the ground as landfill, or dumping or placing of trash, waste or unsightly or offensive material;
 3. Removal or destruction of trees, shrubs or other vegetation except for proper forestry and landscape practices including planting, cutting and pruning of trees, shrubs, and other vegetation, or to improve the scenic view and to implement disease prevention measures;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance or natural deposit in such a manner as to affect the surface of said land;
5. Use of said land except for agricultural, forestry or outdoor recreational purposes permitting said land to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water or soil, conservation or erosion control; or
7. Other acts or uses detrimental to the preservation of said land in its present open and rural condition.



The foregoing restriction is authorized by G.L. c.184, ss. 31-33, and is intended to retain said parcel predominantly in its natural, scenic and open condition, in order to protect the natural and watershed resources of said Town. The restriction shall be administered by the Board of Selectmen of said Town.

B. The Conservation Restriction hereby conveyed shall not operate so grant to the Town or to the Inhabitants of the Town of Acton any right to enter onto said land except as follows:

1. The Conservation Commission of said Town, established under Chapter 40, s. 8C, of the Massachusetts General Laws as amended through one or more duly designated members, employees or agents, shall have the right to enter said land at reasonable times and in a reasonable manner, for the purposes of inspecting said land, insuring compliance with the terms of this Conservation Restriction and remedying any violations thereof;
 2. The Town and the public shall have an easement to pass and repass on foot upon said premises for the purposes of hiking, winter sports or nature study.
- C. This Conservation Restriction shall be binding upon and may be enforced against, the Grantors, their successors, and assigns by the Inhabitants of the Town of Acton and its successors as holders of this Conservation Restriction,

D. Notwithstanding the provisions of the foregoing, the placing by the Grantors or their successors and assigns of signs of a size not exceeding three feet by two feet on the premises conveyed for the purpose of indicating the ownership or said premises, and the restrictions on the use of said premises shall not be in violation of the terms of this Conservation Restriction.

Inasmuch as this Conservation Restriction is given as a gift no documentary stamps are needed for this instrument.

For title of Grantor see deed from Doris E. Landers dated January 17, 1950 and recorded in Middlesex South Registry of Deeds, Book 7522, Page 410.

Witness the execution hereof under seal this 11th day of December, 1978.

Harold A. Buxton
Harold A. Buxton

Devana E. Buxton
Devana E. Buxton

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss,

December 11, 1978

Then personally appeared the above-named Harold A. Buxton and Devana E. Buxton and acknowledged the foregoing instrument to be their free act and deed, before me,

Christopher J. Farrell
Notary Public

My commission expires: Aug 29 1982



APPROVAL BY SELECTMEN

We, the undersigned Board of Selectmen of the Town of Acton, hereby certify that we approve the receipt of the foregoing deed under G.L. c.30, s.9C, as it has been and may be amended, as requested by a vote of the Conservation Commission of the Town, for the protection of the natural and watershed resources of the Town.

Board of Selectmen

William F. [unclear]
John E. [unclear]
[unclear]
[unclear]

APPROVAL BY SECRETARY

The Secretary of Environmental Affairs of the Commonwealth of Massachusetts hereby certifies that she approves receipt of the within conservation restriction under G.L. c.184, s.32.

12/27/78
Dated

[Signature]
 Secretary, Executive Offices
 of Environmental Affairs

GENERAL LAWS OF MASSACHUSETTS

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE XIX. AGRICULTURE AND CONSERVATION

CHAPTER 128. AGRICULTURE

DEFINITIONS

Chapter 128: Section 1A Farming, agriculture, farmer; definitions

Section 1A. "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

General USES

02.1 Agriculture – On a parcel of more than five acres: Agriculture, including the boarding, keeping or raising of livestock; horticulture; floriculture; or viticulture; the use of buildings and structures for the primary purpose of these activities, including the sale of farm products. All of the aforesaid shall be in conformance with the definitions and requirements for these activities of MGL Ch. 40A, s. 3. On a parcel of two acres or more: Cultivating, harvesting and storing of field crops, produce or fruit, and storage of farm equipment that is necessary for these activities; the boarding, keeping and raising of not more than one horse, goat or sheep, plus its offspring up to one year of age.

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A28

A33

A32

Water

66+75

215

E 206

E 58100

PARK

CHESTNUT ST

BEECHNUT ST

WALNUT ST

PARK

THIS PLAN IS CORRECTED FROM THE ORIGINAL PLAN BY THE ADDITION OF THE FOLLOWING INFORMATION:

1. THE AREA BETWEEN THE MATCH LINE AND THE EAST LINE IS TO BE A PART OF THE TRACT OWNED BY JAMES E. WOODS.

2. THE AREA BETWEEN THE MATCH LINE AND THE WEST LINE IS TO BE A PART OF THE TRACT OWNED BY JAMES E. WOODS.

3. THE AREA BETWEEN THE MATCH LINE AND THE SOUTH LINE IS TO BE A PART OF THE TRACT OWNED BY JAMES E. WOODS.

4. THE AREA BETWEEN THE MATCH LINE AND THE NORTH LINE IS TO BE A PART OF THE TRACT OWNED BY JAMES E. WOODS.



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AREA 1 59,415 sq. ft.

AREA 2 30,200 sq. ft.

AREA 3 29,950 sq. ft.

OTHER LAND OF BOSTON (3381 / 3432)

COMPLETED PLAN OF LAND IN ACTION OWNED BY HAROLD A. & DEVENA BOSTON

YOUR OFFICE ENGINEERING DEPARTMENT

SCALE: 1"=40'

NOVEMBER 24, 1978

SECTION FOUR (305) MAP HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE STATE OF MASS.

SECTION FIVE (305) MAP HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE STATE OF MASS.



Harold A. Boston

MATCH LINE

AREA 2 12,180 sq. ft.

EAST LINE

JAMES E. WOODS

WEST LINE

SOUTH LINE

NORTH LINE

(PUBLIC WAY - 1940 DRIVE LAYOUT)

GREAT ROAD

SAND HILL

JAMES E. WOODS

OTHER LAND OF BOSTON (3381 / 3432)

AREA 1 59,415 sq. ft.

AREA 2 30,200 sq. ft.

AREA 3 29,950 sq. ft.

POSSIBLY JAMES E. WOODS C.A.C. REALTY OF BOSTON

AREA 1 (59,415 sq. ft.) BEING FOR RESIDENTIAL USE.

COMPLETED PLAN OF LAND IN ACTION OWNED BY HAROLD A. & DEVENA BOSTON

YOUR OFFICE ENGINEERING DEPARTMENT

SCALE: 1"=40'

NOVEMBER 24, 1978