



*Massachusetts Land Trust Coalition
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September 22, 2016

Kelly J. Ross
Board of Selectmen
Town of Westford
55 Main Street
Westford, MA 01886

Re: Drew Gardens APR

Dear Ms. Ross,

As President of the Massachusetts Land Trust Coalition (MLTC), I am writing to express our board's deep concern over the Selectmen's proposal to amend the Drew Gardens Agricultural Preservation Restriction (APR) through a warrant article at its October 17 Special Town Meeting. The proposed action violates the APR's terms, the statute that created it, and Article 97 of the Massachusetts Constitution.

The Massachusetts Land Trust Coalition (MLTC) is a non-profit organization that represents the interests of over 120 land conservation trusts in the Commonwealth. Over the past 150 years, these land trusts have protected thousands of acres for public benefit. Land trusts have been pioneers in developing state-of-the-art legal tools to safeguard natural and agricultural resources. In Massachusetts, APR protected farms, of all sizes, are a basis for the resurgence of local agriculture. APR's complement the great scenic, biological and recreational values of our natural lands. Drew Gardens lies on prime agricultural soil and the intent of the APR (and indeed all APR's in Massachusetts) was, and is, to ensure that this land is preserved for agriculture now and into the future.

We understand that the warrant article seeks to allow construction of a restaurant and associated development on a portion of the land protected by this APR. We firmly believe this action is a disallowed use on APR land. Furthermore, the process proposed for altering the APR agreement (in a warrant article at Town Meeting) would circumvent the protections imposed by the APR agreement. It is contrary to its legal protection. The process threatens the very intent and meaning of "in perpetuity" which was the aim of the town, its citizens, and the Commonwealth in approving the APR.

Specifically, lands affected by APR's are subject to the protections of Article 97 of the Massachusetts Constitution. It cannot be converted to non-agricultural uses without following the proper approval process. This means a 2/3rds vote at town meeting, a 2/3rds vote of the General Court and approval by the Commonwealth's Commissioner of Agriculture. Amending the APR to allow a non-agricultural use based on a mere Town Meeting vote is contrary to this process and represents a dangerous and unfortunate precedent.

Land trusts and land protection advocates across the state are acutely aware of this threat to the Drew Gardens APR. We believe that APR restrictions are fairly negotiated between parties that seek permanent protection with compensation. They are meant to protect land in perpetuity. They should


not be subject to speculative economic considerations or convenience. Drew Gardens APR is a historical covenant being threatened for private commercial gain.

MLTC has decades of experience in protecting open space and agricultural lands through public and private efforts. We have consulted interested parties and several attorneys who specialize in perpetual restrictions to ensure that we have a full understanding of the issue before the Town. For us, there is no question that the intent of the Drew Gardens APR is the protection and preservation of farmland in perpetuity. The APR is a recorded document that is quite clear about prohibiting activities that are inconsistent with its purposes.

A restaurant, even a "farm to table" one, with its related parking and septic system, is not consistent with agricultural uses as pointed out by the Massachusetts Department of Agricultural Resources Program Planner, Chris Chisholm's 12/7/15 email to Chris Kluchman, Westford's Director of Land Use Management. She writes, "A restaurant is not an agricultural use of the property even if some of the vegetables and orchard fruit were to be grown on the property and used in the restaurant." Attorney Douglas Muir, of Garrity, Levin and Muir also writes in his 9/13/16 opinion to Marian and William Harmon that the restaurant is an incompatible use – "it is not agriculture". Furthermore, Mr. Muir points out the APR itself does not provide for amendments. We agree with his conclusions that the proposal to amend the APR violates the APR itself and applicable laws.

Given the above factors, we respectfully request that you withdraw the Drew Gardens warrant article prior to the October Special Town Meeting.

Sincerely,



Richard K. Hubbard, President
MLTC Board of Trustees

Cc: John Lebeaux, Commissioner, Massachusetts Department of Agricultural Resources
Tara Zedah, General Counsel Massachusetts Department of Agricultural Resources
Drew Farms Task Force, Town of Westford
Maura Healy, Attorney General
Senator Eileen M. Donoghue
Representative James Arciero