

DOHERTY, WALLACE, PILLSBURY AND MURPHY, P.C.

PHILIP J. CALLAN, JR.
GARY P. SHANNON
ROBERT L. LEONARD
A. CRAIG BROWN
L. JEFFREY MEEHAN
JOHN J. MCCARTHY
BARRY M. RYAN
DEBORAH A. BASILE¹
PAUL M. MALECK
W. GARTH JANES^{**}
GREGORY A. SCHMIDT
MICHAEL K. CALLAN^{*}
MICHAEL D. SWEET^{*}
GREGORY M. SCHMIDT
MICHAEL S. SCHNEIDER^{*}
THOMAS M. GROWHOSKI
BRENDA S. DOHERTY
KAREN K. CHADWELL[†]
JESSE BELCHER-TIMME
JOSÉ A. AGUIAR[‡]
REBECCA M. THIBAUT
ANGELINA P. STAFFORD^{*}
ERIN J. MEEHAN

ATTORNEYS AT LAW
ONE MONARCH PLACE, SUITE 1900
SPRINGFIELD, MASSACHUSETTS 01144-1900
TELEPHONE (413) 733-3111
FAX (413) 734-3910

60 STATE STREET
NORTHAMPTON, MA 01060
TELEPHONE (413) 584-1500
FAX (413) 584-1670

www.dwpm.com
E-MAIL: mschneider

COUNSEL
WILLIAM M. BENNETT
ROSEMARY CROWLEY^{***}

DAVID J. MARTEL[‡] (RETIRED)

DUDLEY B. WALLACE
(1900-1987)
LOUIS W. DOHERTY
(1898-1990)
FREDERICK S. PILLSBURY
(1919-1996)
ROBERT E. MURPHY
(1919-2003)
SAMUEL A. MARSELLA
(1931-2004)
PAUL S. DOHERTY
(1934-2016)

[†] REGISTERED PATENT ATTORNEY
^{*} ALSO ADMITTED IN CONNECTICUT
[‡] ALSO ADMITTED IN NEW YORK
^{**} ALSO ADMITTED IN DISTRICT OF COLUMBIA
^{***} ALSO ADMITTED IN SOUTH CAROLINA

April 26, 2016

VIA E-MAIL & 1ST CLASS MAIL

William G. Scibelli, Esquire
Longmeadow Legal Associates, P.C.
908 Shaker Road
Longmeadow, MA 01106-2416

RE: DPW Siting in the Town of Longmeadow

Dear Mr. Scibelli:

As you know, we are counsel to the Town of Longmeadow ("Town"), including the DPW Facility Committee (the "Committee"), currently chaired by Mr. Christopher Cove. We are in receipt of your letter dated March 31, 2016 and Mr. Tully's letter dated March 28, 2015(*sic*). Your letter and Mr. Tully's letter are mistaken and based upon the misunderstandings of facts and legal concepts cited in each of your letters. These mistakes lead to the faulty conclusions that: 1) language contained in the deed recorded in the Hampden County Registry of Deeds at Book 4485, Page 111 (the "Deed") constitutes a real property restriction; and 2) that this real property restriction is somehow enforceable against the Town should it decide to site a new DPW facility on the Wolf Swamp Fields conveyed in the Deed.

Your letter suggests that there is language contained in the Deed that states the following: "Parcel A to be used for recreational purposes *only*" (my emphasis added). That is not correct. The Deed states, in regard to the Wolf Swamp Fields, that they are "to be held for recreational purposes" or "Recreation purposes". Nowhere in the Deed, a copy of which is enclosed for your reference, does the statement exist that "Parcel A to be used for recreational purposes *only*" (emphasis added). This is a serious mistake, and I believe the Committee deserves a more careful treatment of pertinent facts such as these.

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Mr. Tully opines that language in the Deed amounts to a conservation restriction as defined in Mass. Gen. Laws, c. 184, § 31. In general, conservation restrictions are three-party agreements involving the donor, who owns land, a land trust, governmental body or similar entity that holds a certain restriction and the secretary of the Massachusetts Department of Energy and Environmental Affairs who approves of the restriction in a recorded instrument. There is no such tri-party relationship established in the Deed.

Mr. Tully's misapplication of the conservation restriction concept leads him to believe that certain remedies exist for those who question the use of the Wolf Swamp Fields other than for recreation. In particular, he cites Mass. Gen. Laws, c. 184, §§ 19, 27(a)(2), and 32 and Mass. Gen. Laws, c. 260, § 31A.¹ The citation of each of these is inapposite and mistaken.

Mass. Gen. Laws, c. 184, § 19 allows a grantor (and his heirs and devisees) of restricted land to re-vest title upon the filing of certain documents with the Registry of Deeds. As no condition is recited in the Deed, this is inapplicable.

Next, Mr. Tully attempts to state that Mass. Gen. Laws, c. 184, § 27(a)(2) would vest certain neighboring parcel owners with the ability to seek enforcement in the event the Wolf Swamp Fields is used for other than recreational purposes. Section 27(a)(2) allows an owner of an interest in benefitted land adjoining burdened land standing in court to enforce a restriction. This was simply not the relationship amongst the grantors and the Town reflected in the Deed. No neighboring land to the Wolf Swamp Fields is benefitted by the terms of the Deed.²

Massachusetts General Laws, c. 184, § 32 provides that conservation restrictions that the secretary of the Massachusetts Department of Energy and Environmental Affairs has approved and which has been recorded may be enforced by certain members of the public. Again, the Deed did not create any such conservation restriction. Mr. Tully's citation, therefore, is inapplicable.

¹ This citation is to a statute of limitations that cannot apply to the facts surrounding Wolf Swamp Fields. The statute applies to reversionary rights created prior to January 2, 1955, but I do find it somewhat ironic that Mr. Tully writes "As to the issue that Town Counsel will be arguing that there is no condition or reversion or reverter imposed in the [Deed] in 1977 is irrelevant" when Mr. Tully then cites a statute that requires a condition, reversion or reverter in order to be relevant.

² A proper example of this concept would be where a grantor of a parcel that had recited in a deed to a neighboring grantee that no earth excavation would take place on the granted parcel and subsequent earth excavation did take place on the parcel. The grantor would be allowed to sue the grantee in court for excavation activities that subsequently take place on the granted parcel.

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The Committee has been asked by the Town to conduct a serious inquiry that is meant to benefit the entire Town. Its members are volunteers. I do not believe it is helpful to the Town, or respectful of the Committee's volunteers' time to threaten litigation based on basic misunderstandings of the facts involved and the laws cited. As the Committee is an arm of the Town, we consider the Committee and its members to be our clients in regard to Town matters. Accordingly, direct any further communication in regard to this matter to me.

I believe the most efficient way forward in regard to this matter is for the two of us to discuss what language in the Deed you believe creates a restriction of any sort. Please feel free to contact me with any questions.

Very truly yours,



Michael S. Schneider

MSS/mjs

cc: DPW Facility Committee, c/o Christopher Cove, P.E. (via e-mail)
Stephen Crane, Town Manager (via e-mail)
Dennis E. Tully, Esquire (via e-mail & 1st Class Mail)
Michael K. Callan, Esquire

WE, JOHN H. BRECK, JR., AND ETHEL H. BOWERS, both of Longmeadow, Hampden County, Massachusetts, and JACOB LEVINE, of Fort Lauderdale, Broward County, Florida, and DOROTHY LERNER GLUCK, formerly DOROTHY LERNER, of Pompano Beach, Broward County, Florida, said Breck and Levine being the ~~of surviving partners of Longmeadow Development Company~~ ^{ORIGINAL}

~~have~~ ^{being} ~~conveyed~~, for consideration paid, and in full consideration of One Hundred Ninety Thousand Dollars (\$190,000.00)

grants to THE TOWN OF LONGMEADOW, HAMPDEN COUNTY, MASSACHUSETTS, a duly organized and existing municipal corporation, to hold title in fee simple, for the purposes below set forth, with quitclaim covenants

~~whereby~~ A certain parcel of land situated on the southerly side of Wolf Swamp Road, Longmeadow, Hampden County, Massachusetts, bounded and described as follows: (Description and encumbrances, if any)

Beginning at an iron pin in the southerly line of Wolf Swamp Road and being the northwesterly corner of the premises herein granted and being the northeasterly corner of land now or formerly of one Anthony Papa, and running thence N 82°50'40" E, one hundred ninety five and 01/100 (195.01) feet to an iron pin; thence N 78°47'50" E, seven hundred twelve and 18/100 (712.18) feet to an iron pin; thence by a curve to the left having a radius of five hundred thirty six and 47/100 (536.47) feet an arc distance of three hundred ten and 99/100 (310.99) feet to a point; thence continuing in a curved line along the southerly line of Wolf Swamp Road a distance of two and 13/100 (2.13) feet to an iron pin at land now or formerly of Western Massachusetts Electric Company; thence S 07°23'40" E fifteen hundred sixty nine and 13/100 (1569.13) feet to an iron pin at the State Line dividing Connecticut from Massachusetts; thence S 81°57'00" W, eleven hundred four and 08/100 (1104.08) feet along said line dividing Connecticut from Massachusetts to a granite bound at other land of The Town of Longmeadow; thence N 12°40'10" W, one thousand five and 93/100 (1005.93) feet to an iron pin at land now or formerly of Stratton Associates; thence N 07°09'20" W, four hundred twenty five and 35/100 (425.35) feet to the iron pin at the point of beginning; the first four courses running by Wolf Swamp Road. This conveyance creates no new boundaries. Containing 38.89 acres.

Subject to a right of way twenty (20) feet wide for a depth of five hundred (500) feet parallel to land of Western Massachusetts Electric Company.

Subject to all other easements, restrictions and reservations of record.

Subject to taxes assessed for the current period.

For title reference of Dorothy Lerner Gluck, see Estate of Herbert Lerner, Hampden County Probate Case No. 148892; for that of Ethel H. Bowers, see deed to her to be recorded herewith; and for that of John H. Breck, Jr. and Jacob Levine, see deed of Longmeadow Development Corp. recorded in the Hampden County Registry of Deeds in Book 3550, Page 174.

The following 19.82 acres, being the southerly portion of the premises herein granted, is to be held for Conservation Purposes as provided under Chapter 40 of the Massachusetts General Laws, Section 8C as amended:

Beginning at a granite bound in the line dividing Massachusetts from Connecticut at the southeasterly corner of other land of The Town of Longmeadow used for conservation purposes and running thence by said Connecticut-Massachusetts line, N 81°57'00" E eleven hundred four and 08/100 (1104.08) feet to an iron pin at land now or formerly of Western Massachusetts Electric Company; thence N 07°23'40" W, one thousand sixty nine and 13/100 (1069.13) feet to a point; thence S 65°49'17" W, three hundred twenty two and 17/100 (322.17) feet to a point; thence S 46°02'41" W, one hundred fifty two and 00/100 (152.00) feet to a point; thence S 37°41'28" W, three hundred eighty nine and 00/100 (389.00) feet to a point; thence S 55°27'28" W, one hundred ninety one and 00/100 (191.00) feet to a point; thence S 70°40'57" W, two hundred seventy eight and 25/100 (278.25) feet to a point at land now or formerly of Town of Longmeadow used for conser-

(*Individual--Joint Tenants--Tenants in Common--Tenants by the Entirety.)

ADDRESS OF GRANTEE: 20 WILLIAMS ST LONGMEADOW, MASS 0104

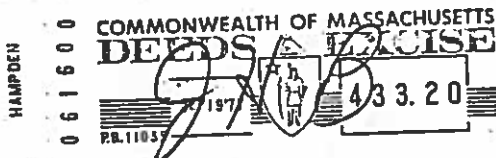
vation purposes; thence S 12°40'10" E, four hundred eighty and 93/100 (480.93) feet to the granite bound at the place of beginning.

The following 19.07 acres being the northerly portion of the premises herein granted is to be held for recreational purposes:

Beginning at an iron pin in the southerly line of Wolf Swamp Road and being the northeasterly corner of land now or formerly of one Anthony Papa, and running thence N 82°50'40" E, one hundred ninety five and 01/100 (195.01) feet to an iron pin; thence N 78°47'50" E seven hundred twelve and 18/100 (712.18) feet to an iron pin; thence by a curve to the left having a radius of five hundred thirty six and 47/100 (536.47) feet, an arc distance of three hundred ten and 99/100 (310.99) feet to a point; thence continuing in a curved line along the southerly line of Wolf Swamp Road a distance of two and 13/100 (2.13) feet to an iron pin at land now or formerly of Western Massachusetts Electric Company; thence S 07°23'40" E five hundred (500) feet to a point; thence S 65°49'17" W, three hundred twenty two and 17/100 (322.17) feet to a point; thence S 46°02'41" W, one hundred fifty two and 00/100 (152.00) feet to a point; thence S 37°41'28" W, three hundred eighty nine and 00/100 (389.00) feet to a point; thence S 55°27'28" W, one hundred ninety one and 00/100 (191.00) feet to a point; thence S 70°40'57"W, two hundred seventy eight and 25/100 (278.25) feet to a point at land now or formerly of the Town of Longmeadow used for conservation purposes; thence N 12°40'10" W, five hundred twenty five and 00/100 (525.00) feet to an iron pin; thence N 07°09'20" W, four hundred twenty five and 35/100 (425.35) feet to an iron pin at the place of beginning.

The above described premises being as shown on a Plan entitled "Plan of Land in Longmeadow, Mass., owned by The Town of Longmeadow, dated July 1977" Drawn by Joseph J. Cote, and recorded in H.C.R.D. in Book of Plans 173 pg. 16.

The land to be held by the Conservation Commission being shown on said Plan as Parcel "B"--and the land for Recreation purposes being shown as Parcel "A".



Witness OUR hand^s and seal^s this 16th day of September 1977

William W. Swann
to all

John H. Breck, Jr.
John H. Breck, Jr.
Jacob Levine
Jacob Levine
Dorothy Herner Gluck
Dorothy Herner Gluck
Ethel H. Bowers
Ethel H. Bowers

A TRUE PHOTOCOPY AS RECORDED IN
HAMPTEN COUNTY REGISTRY OF DEEDS
AND IS SO CERTIFIED

The Commonwealth of Massachusetts

Hampden, ss. September 16, 19 77

Then personally appeared the above named JOHN H. BRECK, JR. and JACOB LEVINE

and acknowledged the foregoing instrument to be their free act and deed, before me

RECEIVED
SEP 19 1977
AT 10:01 AM AND
REG'D FROM THE ORIGINAL

Mary E. Mason
Mary E. Mason, Notary Public
My Commission Expires March 26, 1982