



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

ARTICLE NO. 7009 3410 0002 3572 8421 ARTICLE NO. 7009 0080 0001 0671 1585

September 20, 2018

Yingsum Tsui
Manjusri, LLC
156 Farm Street
Dover, MA 02030

Yingsum Tsui
10 Railroad Street
Abington, MA 02351

Re: Land off Valley Road, also known as off 70 Valley Road,
Southborough, MA

Dear Ms. Tsui:

The Department of Conservation and Recreation (“Department” or “DCR”) has recently become aware that the above-referenced property has been listed for sale. The real estate agent has listed the 16.51± acre property online and the listing states that the property includes, among other things, a 2 bedroom cottage/single family for residential use, a shed, a gazebo and a paved parking area. Consistent with that, a private deed restriction was recorded on May 10, 2018 in the Worcester South District Registry of Deeds in Book 58785, Page 214 which declares “that the premises thereon shall have a deed restriction limiting the number of bedrooms in said dwelling to no more than two bedrooms [...]” This private deed restriction was apparently recorded in connection with the installation of a septic system and, as discussed below, conflicts with an existing deed restriction that prohibits, among other things, residential use of the property.

The above-referenced parcel contains approximately 16.51 acres and is located off the end of Valley Road in Southborough. The parcel was owned at one time by the Commonwealth of Massachusetts, having been acquired by the Commonwealth, acting through its Metropolitan Water Board, as part of a much larger taking of land in 1896. In 1901, the Commonwealth, acting through its Metropolitan Water and Sewerage Board, conveyed the parcel to your predecessor in title, Mr. Eugene Emory, by a deed recorded in the Worcester South District Registry of Deeds in Book 1717, Page 26 (copy attached). As you know, the Commonwealth reserved to itself in this deed a restriction (the “DCR deed restriction”) that:

no building shall ever be erected or maintained thereon and that said parcel shall never be used for any purpose except pasturage purposes and such cultivation as may be

reasonably proper for the maintenance of good pasturage.

In the late 1970s, the Metropolitan District Commission (MDC), now DCR¹, did not object to a request by a prior owner, Ernest Kallender, to operate a golf course on the above-referenced property based on understanding that the grass cutting to maintain the course would be considered consistent with the “pasturage” restriction in the DCR deed restriction. No buildings were authorized at that time on the property due to the DCR deed restriction. However, under Chapter 574 of the Acts of 1981, the Legislature authorized the MDC (now DCR):

notwithstanding the [...] restrictions contained in a deed [...] recorded with the Worcester district registry of deeds in book 1717, page 26, [...] to issue a permit to Ernest Kallender to construct a storage building, not to exceed one and one-half stories in height at the golf course, known as “Stony Brook Golf Course” [...] which is located on the premises.

Apart from the permitted golf course storage building not to exceed 1.5 stories, no other buildings are authorized under the DCR deed restriction.² No use other than “pasturage,” and particularly no residential use, is authorized under the DCR deed restriction. The DCR deed restriction, a property interest held by the Commonwealth through the Department, is of critical importance to the protection of the Sudbury Reservoir, which is an active emergency backup water supply for the metropolitan water system.

In September 2016, you visited with and also had a number of conversations and email exchanges with John Scannell, the Department’s then Regional Director and current Director of the Division of Water Supply Protection. In your personal and email exchanges, you clearly expressed that you understood and would comply with the DCR deed restriction. On March 22, 2017, I spoke with Richard Kattman, who represented himself as your architect. I explained to Mr. Kattman the nature of DCR’s deed restriction and even emailed to him a copy of the entire deed as recorded in book 1717, page 126. As you know, you acquired the property subject to DCR’s deed restriction and the limited uses to which the property could be put. Notwithstanding this, a number of activities and uses have occurred on the property that violate DCR’s deed restriction.

Accordingly, the Department hereby notifies you that, at a minimum, the following activities

¹ The Metropolitan Water and Sewerage Board is the successor agency to the Metropolitan Water Board pursuant to St. 1901, c. 168. The Metropolitan District Commission (MDC) was the successor agency to the Metropolitan Water and Sewerage Board pursuant to St. 1919 (General Acts), c. 350, s. 123. The Department, including its Division of Water Supply Protection (DWSP), is the successor agency to the Watershed Division of the MDC pursuant to St. 2003, c. 26 and c. 41. All of these entities were/are agencies of the Commonwealth of Massachusetts.

² Three buildings are located presently on the property, although Chapter 574 of the Acts of 1981 only authorized the MDC to permit one golf storage building. One of the buildings, at two stories, clearly exceeds the 1.5 story limitation in Chapter 574.

and uses on the above-referenced property violate the DCR deed restriction: the residential dwelling and all other buildings, except for a golf course storage building not exceeding 1.5 stories as limited by Chapter 574 of the Acts of 1981; any residential use; the septic system; pavement, including the paved parking lot; and any use other than "pasturage." This letter is to notify you in unequivocal and unconditional terms that you, your employees, your contractors and your agents are prohibited and shall cease and desist from using the property for these activities and uses. Prohibited activities also include marketing or advertising the property for these activities and uses. You are hereby instructed to take immediate steps to bring the above-referenced property in compliance with the DCR deed restriction, including the removal of all unauthorized activities and uses. This specifically includes the removal of the septic system and all buildings from the above-referenced property, with the exception of a golf storage building not to exceed 1.5 stories in height in accordance with Chapter 574 of the Acts of 1981.

Should it be determined that you have failed to comply with the prohibitions and instructions in this letter, the Department will be forced to pursue all legal remedies and recourse available to protect its property rights, and to recover the Department's costs for such actions. Your prompt and continuing attention to and compliance with the requirements set forth in this letter and DCR's deed restriction are anticipated. If you have any questions, please feel free to contact me by phone at 617- 626-4994, by email at Thomas.LaRosa@mass.gov or by mail at the address on the letterhead.

Sincerely,



Thomas J. LaRosa
Deputy General Counsel

Cc: By email

John Scannell, Director, DCR/DWSP

Karen Nober, General Counsel, DCR

Barbara Kattmann, Century 21 Commonwealth: Barbara.Kattman@commonmoves.com

Mark Robidoux, Building Commissioner/Zoning Enforcement Officer, Town of Southborough: mrobidoux@southboroughma.com

May in the year one thousand nine hundred and two.

Signed, sealed and delivered

in presence of

John B. Ratigan, to

Thomas P. Walsh (seal)

both signatures

Julia Walsh (seal)

Commonwealth of Massachusetts.

Worcester ss. May 13th, 1902. Then personally appeared the above named Thomas P. Walsh, and acknowledged the foregoing instrument to be his free act and deed, before me,

John B. Ratigan, Justice of the Peace.

Rec'd. May 19, 1902, at 4h. 47m. P. M. Ent'd & Ex'd.

Attest:

Wm. H. Hunt

Register.

North Brookfield
Sav. Bank
to
Unknown

KNOW ALL MEN BY THESE PRESENTS, that the North Brookfield Savings Bank, the mortgages named in a certain mortgage given by Hiram Eaton to said Bank, dated January 4th, 1889, and recorded with Worcester County --A Registry of Deeds, Book 1286, Page 404, having received full payment and satisfaction of the same, do, in consideration thereof, hereby cancel and DISCHARGE said mortgage.

IN WITNESS WHEREOF, the said North Brookfield Savings Bank, by Charles E. Batcheller, their Treasurer, duly authorized for that purpose, have hereunto set their name and corporate seal this 4th day of March, 1902 18.

In presence of

North Brookfield Savings Bank (seal)

By Chas. E. Batcheller, Treasurer.

Worcester ss. Mar. 4th, 1902. Then appeared the above named Treasurer and acknowledged the foregoing instrument to be the free act and deed of the North Brookfield Savings Bank, before me,

L. Emerson Barnes, Justice of the Peace.

Rec'd. May 20, 1902, at 8h. 30m. A. M. Ent'd & Ex'd.

Attest:

Wm. H. Hunt

Register.

Commonwealth of
Mass.

to

Emery

KNOW ALL MEN BY THESE PRESENTS, that we, Henry H. Sprague, Henry P. Walcott, and James A. Bailey, Junior the Metropolitan Water and Sewerage Board, duly constituted and appointed under and according to the provisions of chapter 168 of the acts of the year 1901, in pursuance of the power and authority conferred upon said Board by said act and by chapter 488 of the acts of the year 1895, and acts in addition thereto and amendment thereof, and in consideration

of the sum of One Dollar and other valuable considerations paid by Eugene Emery of Southborough, in the county of Worcester and Commonwealth of Massachusetts, the receipt of which is hereby acknowledged, do hereby grant, convey, REMISE, RELEASE and forever QUIT-CLAIM unto the said Eugene Emery, and his heirs and assigns a certain parcel of land, computed to contain sixteen and fifty-one one-hundredths (16.51) acres, situate in said SOUTHBOROUGH on the westerly side of a town road formerly known as the town road leading from the "brick schoolhouse" to the house now or formerly of Charles M. Brewer, that portion of said town road northerly of the northerly boundary line of said parcel, produced easterly, being now discontinued, and said parcel being bounded and described as follows, to wit: easterly by the westerly line of said town road six hundred seventy-two and forty one-hundredths (672.40) feet; southerly by land formerly of Betsey Gardner, now supposed to be of Nahum F. Brewer in part and of Peter Cordeau in part, measuring in all eleven hundred sixty-three and fifty one-hundredths (1163.50) feet; westerly by land formerly of Postina A. Allen six hundred eighty-one and ninety-seven one-hundredths (681.97) feet; and northerly by land formerly of John A. Page, land formerly of DeClinton Nichols, and land formerly of Franklin Willard, measuring in all ten hundred twenty-two and ninety-three one-hundredths (1022.93) feet; said lands bounding the above described parcel on the north and west being now of the Commonwealth of Massachusetts; its northerly and westerly boundary lines and the larger part of the southerly boundary line being marked by stone walls; being the same parcel of land conveyed by Harriet J. Harlow and others to the City of Boston by deed dated December 16, 1895, and recorded with Worcester District Deeds, Book 1493, page 293; and all the property, right, title and interest of the City of Boston therein was taken by an instrument of taking made by Henry H. Sprague, Wilmot R. Evans, and John R. Freeman, the Metropolitan Water Board, dated January 4, 1896, and recorded with said Deeds, Book 1495, page 245; and said parcel is hereby conveyed subject to the restrictions that no building shall ever be erected or maintained thereon, and that said parcel shall never be used for any purposes except pasturage purposes and such cultivation as may be reasonably proper for the maintenance of good pasturage, which restrictions the grantee hereby agrees shall be observed by himself and his heirs and assigns. The granted parcel is shown upon a plan, a blue print copy of which is to be recorded herewith, dated August, 1900, and inscribed "Commonwealth of Massachusetts, Metropolitan Water Works, Plan of Land in Southborough, formerly of Helen E. Harlow".

T O H A V E and T O H O L D the granted premises, with all

the privileges and appurtenances thereto belonging, to the said Eugene

Emery and his heirs and assigns, to their own use and behoof forever.

I N W I T N E S S W H E R E O F, we, the said Henry H. Sprague, Henry P. Walcott, and James A. Bailey, Junior, constituting the Metropolitan Water and Sewerage Board aforesaid, have hereunto set our hands and seals, no stamps being required under the revenue laws of the United States, this twenty-eighth day of May, in the year one thousand nine hundred and one.

Signed and sealed in presence of

Wm. N. Davenport

Henry H. Sprague (seal)

to all

Henry P. Walcott (seal)

James A. Bailey Jr. (seal)

Metropolitan Water and Sewerage Board.

Commonwealth of Massachusetts.

Suffolk ss. May 31st, 1901. Then personally appeared the above named Henry H. Sprague, Henry P. Walcott, and James A. Bailey, Junior, the Metropolitan Water and Sewerage Board aforesaid, and acknowledged the foregoing instrument to be their free act and deed. Before me,

Wm. N. Davenport, Justice of the Peace.

Rec'd. May 20, 1902, at 8h. 30m. A. M. Ent'd & Ex'd.

Attest:

Wm. N. Davenport

Register.

K N O W A L L M E N B Y T H E S E P R E S E N T S,

Carriere et ux.

to

Equity Co-op.

Bank

See Discharge,

B. 1868 P. 524

that we, Charles Carriere and Exilia Carriere, husband and wife, of Worcester, in the County of Worcester, and Commonwealth of Massachusetts, in consideration of Two Hundred Dollars, paid by the Equity Co-operative Bank, a Corporation duly established by law, in Worcester, in the County of Worcester and Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, do hereby G I V E, G R A N T, B A R G A I N, S E L L and C O N V E Y unto the said Corporation, a parcel of land and the buildings on the same, in said WORCESTER, and bounded and described as follows: The same as in a deed of mortgage by us to the grantee, dated Feb. 12, 1902, and recorded with Wor. Dist. Deeds, Book 1708, page 235.

T O H A V E and T O H O L D the granted premises, with all the privileges and appurtenances thereto belonging, to said Corporation, and its successors and assigns, to their own use and behoof forever. And we hereby, for us and our heirs, executors and administrators, covenant with said grantee and its successors and assigns, that we are lawfully seized in fee-simple of the granted premises; that they are free from all incumbrances, except to the grantee; that we have good right to