

BARNSTABLE COUNTY

In the Year Nineteen Hundred and Ninety-Seven

Ordinance 97-5

To establish an agricultural restriction on Parcel A, containing 12.95 acres± located at Route 6A in Barnstable Massachusetts, shown on plan of lands for parcels A through E entitled, "Plan of Land in Barnstable, Mass. for The County Commissioners as made by the Town of Barnstable D. P. W. Engineering Section Date: May 18, 1988", shown in Plan Book 452, Pages 20 - 22. Such parcels of land contain an area which totals about 97.71 acres.

Barnstable County hereby ordains:

The Barnstable County Farm property consists of five parcels of land containing approximately 97.71 acres of land and is located in Barnstable, MA. The purpose of the Agricultural Restriction is to ensure that the Premises shall be used for conservation and agricultural purposes only, in perpetuity.

In accordance with Section 2-8 (d) of the Barnstable County Home Rule Charter, the following Agricultural Restriction shall be executed by the Board of County Commissioners.

AGRICULTURAL RESTRICTION

We, Robert A. O'Leary, Mary J. LeClair and Christine B. Dolen, as we are duly elected Commissioners of the County of Barnstable, Massachusetts, acting for and on behalf of the County of Barnstable (the "Grantor"), its successors and assigns, hereby grant with quitclaim covenants to the Inhabitants of the Town of Barnstable (the "Grantee") an Agricultural Restriction, in perpetuity, under the provisions of MGL c. 184, s. 31-33 as amended, over the hereinafter described property (the "Premises") located in Barnstable (village), Massachusetts.

I. DESCRIPTION OF PREMISES:

Being five parcels of land shown as Parcel A (12.95 acres±), parcel B (56.17 acres), parcel C (17.92 acres), parcel D (4.69 acres) and parcel E (5.98 acres) on a plan entitled "Plan of Land in Barnstable, Mass. for The County Commissioners as made by the Town of Barnstable D. P. W. Engineering Section Date: May 18, 1988", said plan (the "Plan") being recorded in the Barnstable County Registry of Deeds in Plan Book 452, Pages 20 - 22. Said parcels of land contain an area which totals about 97.71 acres.

There is included in this conveyance an easement of way appurtenant to parcel B to travel across the land of the Old Colony R.R. Company located between said parcel; B and parcel A and also the right to use the cattle pass situated on said land of Old Colony R.R. Company.

This conveyance is made subject to a pole-line easement in favor of the Radiomarine Corporation of America as granted in a deed from Amy L. Handy to Marconi Telegraph - Cable Company, Incorporated by deed dated June 16, 1915 recorded with Barnstable County Registry of Deeds in Book 262, Page 314.

For our title see Deed of William A Jones, et ux, to the County of Barnstable dated September 18, 1936 recorded in the Barnstable County Registry of Deeds Book 522, Page 419, and see Deed of Richard Cobb to the County of Barnstable dated December 30, 1948 recorded in Barnstable County Registry of Deeds Book 711, Page 369 and see Deed of Old Colony Railroad Company to the County of Barnstable dated August 26, 1937 recorded in Barnstable County Registry of Deeds Book 530, Page 329.

II. PURPOSE:

The purpose of this Agricultural Restriction is to ensure that the Premises shall be used for conservation and agricultural purposes only, in perpetuity. Agricultural purposes shall mean the use of land for usual farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and farmstand retail marketing of food crops, plants, animals and animal products, and the use and application of techniques of soil preparation and management, fertilization, weed, disease and pest control, land application of organic waste, irrigation, drainage and water management, grazing and conservation.

This Agricultural Restriction is intended to fulfill the objective of the Town of Barnstable, as expressed in its 1984 Open Space Plan (page 86), that the community should "work to ensure that existing open space, particularly the Barnstable County Farm (emphasis added)... is not converted to other uses." This Agricultural Restriction is intended to expand upon the geographical and functional scope of the duly approved 1988 County Farm Conservation Restriction recorded in the Barnstable County Registry of Deeds in Book 6417, Page 225.

III. TERMS AND CONDITIONS:

A. PROHIBITED ACTIVITIES: The terms of the Agricultural Restriction are that, except as set forth in Paragraph B below, the Grantor will not perform or give permission to others to perform the following acts of uses on, above or under the Premises:

(1) The construction or placement of any building, road, sign, billboard, or other advertising display, mobile home, utility pole, tower, conduit or line or other temporary or permanent structure except as may be necessary and desirable to further agricultural uses of the Premises, provided that any such excepted man-made structure (with the exception of fences and buildings erected to secure the Premises) shall not materially diminish the scenic qualities of the Premises; in no event shall any temporary or permanent structure be placed or erected on parcel A within 700 feet of the southerly sideline of State Highway Route 6A as shown on the above-described Plan;

(2) The excavation, dredging or removal from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit in such manner as to affect the surface thereof, except as necessary for customary agricultural practice or drainage ditching activities relating to mosquito and other insect control;

(3) The placement, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts (except storage of minor functioning parts stored indoors for use as a limited repair inventory), rubbish, debris, junk, waste or other substance or material whatsoever, except for composting activities or otherwise as necessary for customary agricultural practice; all composting or manure or animal waste storage shall be conducted using best management practices to preserve water quality and conform to existing state and local health and wetlands regulations;

(4) Cutting, removing or otherwise destroying trees, grasses or other vegetation, except for (a) the harvesting of hay and other crops, (b) ditching activities and (c) clearing of shrubbery, trees and other vegetation for the purposes of beautification and maintenance of vistas, or expanding the area of land used for agriculture, including land use for pasture and crops and (d) tree farming;

(5) Any commercial, industrial and institutional use not related to agriculture;

(6) Any camping, dormitory or temporary or permanent residential facility except for the continued use of present dwelling on parcel E as a single-family home;

(7) Hunting, trapping or use of the premises for firearms practice;

(8) Recreation uses, including but not limited to golf courses and playing fields;

(9) Any use of the Premises and activity thereon which, in the reasonable opinion of the Grantee, is or may become inconsistent with the intent of this grant, being the preservation of the Premises predominantly in their agricultural condition, the protection of environmental systems and scenic enjoyment.

B. PERMITTED USES: The uses of Paragraph A notwithstanding, the following uses and activities by the Grantor shall not be prohibited by this Restriction or considered inconsistent with the intent of this grant:

(1) Carrying on agricultural operations, including the maintenance and expansion of the existing barn and other existing buildings used for agricultural operations;

(2) Maintenance of cattle, horses and domestic animals;

(3) Repair and maintenance of stone walls, farm roads and the existing driveway over the Premises, and the installation of underground utility lines therein;

(4) Conducting educational tours, walks, demonstrations, exhibits and other forms of informational exchange to convey an appreciation of the agricultural value and history of the Premises to interested groups and the general public, in conformity with the restrictions hereinabove set forth;

(5) Use of existing lift for repair of agricultural vehicles and Barnstable County jail and house of correction vehicles. All vehicle repair operations shall be consistent with federal, state and Town of Barnstable laws, rules and regulations.

(6) Low level confidence course located in the field in the back of the house which is used in a variety of rehabilitative programs to teach team work.

The Grantor agrees to notify the Grantee, in writing, before exercising any reserved right the exercise of which may impact on the conservation or agricultural interests associated with the Premises.

IV. CHANGES IN EXISTING CONDITIONS OR USES:

The foregoing Agricultural Restriction is authorized by Massachusetts General Laws Chapter 184, Section 31 through 33 and otherwise by law, and is intended to ensure that the Premises will be retained in perpetuity in their natural, scenic and open condition for conservation and agricultural purposes. In the event that agricultural use by the Grantor on the Premises is discontinued or abandoned, the Grantor shall take or cause to be taken measures to protect the conservation and scenic value of the property. These measures include, but are not limited to:

(1) Soil stabilization measures on former cropland, including the planting of grasses, shrubs or trees, particularly those with wildlife nutrition value or habitat value; and

(2) Removal or maintenance of existing buildings whose use is discontinued in order to prevent structural decay and visual dilapidation.

V. LEGAL REMEDIES:

In the event that a breach of these restrictions by the Grantor or by a third party comes to the attention of the Grantee, the Grantee must notify the Grantor in writing of such a breach. The Grantor shall have 30 days after receipt of such notice to undertake actions including restoration of the Premises that are reasonably calculated to correct swiftly the conditions constituting such a breach. If the Grantor fails to take such corrective action, the Grantee shall at its discretion undertake such actions, including

appropriate legal proceedings, as are reasonably necessary to effect such corrections; and the cost of such corrections, including the Grantee's expenses, court costs and legal fees shall be paid by the then fee-owner, provided the then fee-owner is determined to be responsible for the breach.

VI. ACCESS:

The Agricultural Restriction hereby conveyed does not grant to the Grantee, to the public, or to any other person any right to enter upon the Premises, except as follows: The Grantee shall have the right to enter the Premises at reasonable times and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith, of enforcing this Agricultural Restriction, or of taking any and all actions with respect to the Premises as may be necessary or appropriate with or without order of court, to remedy or abate any violation hereof. The Conservation Commission, or its successor, of the Town of Barnstable shall have the primary authority to enforce the provision of this Restriction.

VII. DURATION AND ASSIGNABILITY:

The burdens of this Agricultural Restriction shall run with the Premises and shall be enforceable against the Grantor and all future owners and tenants in perpetuity. The Grantor may lease the Premises for private agricultural use, provided that said lease shall be subject to the provisions of the foregoing Restriction.

VIII. ESTOPPEL CERTIFICATES:

Upon the request by the Grantor, the Grantee shall within twenty (20) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Agricultural Restriction, and which otherwise evinces the status of this Agricultural Restriction as may be requested by the Grantor.

IX. CONTROLLING LAW

The interpretation and performance of this Agricultural Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

X. LIBERAL CONSTRUCTION:

Any general rule of construction to the contrary notwithstanding, this Agricultural Restriction shall be liberally construed in favor of the grant to effect the purposes of this Restriction and the policies and purposes of the Barnstable Conservation Commission. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

XI. AMENDMENT:

The Grantor and the Grantee may by mutual consent amend any term or provision hereof provided that this Restriction as thus amended complies with the then applicable requirements of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts; Massachusetts General Law, Chapter 184, Section 31-33; Internal Revenue Code of 1986 Section 170(h) and the Conservation Restriction Program of the Town of Barnstable, or any successors thereto, and provided that any such amendment, together with any necessary approvals to its effectiveness, shall be recorded in the Barnstable County Registry of Deeds.

XII. EFFECTIVE DATE:

Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Agricultural Restriction deed is recorded in the Barnstable County Registry of Deeds, after all signatures required by Section 32, Chapter 184 of the General Laws of Massachusetts have affixed hereto.

Adopted on June 4, 1997 by the Assembly of Delegates.



Julia C. Taylor, Speaker

Approved by the Board of County Commissioners, June 25, 1997, at, 2:00 p.m.
Date Time

  

