

Jill Goldsmith

From: Jill Goldsmith
Sent: Monday, November 26, 2018 3:56 PM
To: Cory Metters; Dean Nicastro; Dykens, Jeff; Jeffrey Dykens; Jill Goldsmith; Peter Cocolis; Shanna Nealy; Shareen Davis
Cc: Terry Whalen; Mandi Speakman
Subject: FW: Middle Road Parcel Taking

Importance: High

All- this relates to the Middle Road "MR – Option 1" site - further review of the Town's acquisition; BOS vote in 1960 and the Order of Taking in 1964. Please see below from Town Counsel Costello. We will print for you. Thx! Jill

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From: Patrick Costello <pcostello@lccplaw.com>
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Subject: Middle Road Parcel Taking
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Jill:

As discussed earlier this afternoon, the "Middle Road Parcel" acquired by the Town pursuant to the October 26, 1964 Order of Taking, was acquired for the express purpose of "Extension of the present Disposal Area". The Order of Taking executed and recorded by the Selectmen omitted to incorporate the alternative prospective use of the land "for other municipal purposes" apparently authorized by the March 6, 1960 ATM vote under Article 22 (we should confirm the actual language of *the vote* under Article 22 to assure its consistency with the Article language). Thus, this parcel of land was acquired by the Town *only* for use in relation to extension of the "Disposal Area". I understand that the subject parcel was never actually devoted to this use, however, and is, presently, a vacant parcel of land.

Since the vote under Article 22 of the March 1960 Town Meeting also authorized the acquisition of this parcel for "other municipal purposes", presumably within the discretion of the Board of Selectmen (based on the lack of express language in the Town Meeting vote stating otherwise), the Board could prepare and execute a Supplemental or Confirmatory Order of Taking establishing additional proposed uses of the property for general municipal purposes, and/or specifically for purposes of a Council on Aging Facility in accordance with the 1960 Town Meeting authorization.

Once such an Order of Taking is executed and recorded, I suggest that the requirements of GL c. 40, §15A, relative to the transfer of Town land, would not be applicable.

General Law c.40, §15A provides: "Whenever a board or officer having charge of land, constituting the whole or any part of an estate held by a town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose, whether such land was acquired before or after the effective date of this section and whether acquired by eminent domain, purchase, gift, devise or otherwise, such board or officer shall forthwith give notice of such determination to the board of selectmen of the town. At any time after the receipt of such notice..... the town by a two thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose, any provision of general or special law to the contrary notwithstanding; provided, that no such transfer shall be valid if it is in violation of any term or condition of the title of the town to such land. (emphasis added)."

By its terms, G.L. c. 40, §15A, only applies where municipal land is being held for a "specific purpose" and the city or town now wants to use the land for a *different* purpose. Since the Town, upon recording the Supplemental/ Confirmatory Order of Taking, will be holding the subject land for a broad range of municipal purposes, it may use the property for any of those purposes, including a new COA Facility, without complying with the transfer provisions of G.L. c. 40, §15A. See, *LeClair v. Town of Norwell*, 430 Mass. 328, 339 n.13 (1999), and *Nickolas v. City of Marlborough*; Superior Court of Massachusetts, Middlesex, May 9, 2014, Decided; May 13, 2014, Filed Opinion No.: 126777; Docket Number: MICV2013-05608.

Accordingly, I suggest that the Board consider adopting a Supplemental/ Confirmatory Order of Taking incorporating the full scope of prospective uses of the subject parcel contemplated by the March 1960 ATM, whereupon, the subject parcel would be available for use as a COA Facility.

Pat

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