

**TOWN OF MILFORD, MASSACHUSETTS
LEGAL DEPARTMENT
TOWN HALL
52 MAIN STREET
MILFORD, MASSACHUSETTS 01757-2622**

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**GERALD M. MOODY
TOWN COUNSEL**

August 29, 2013

Richard Villani, Esq.
Town Administrator
Town Hall – 52 Main Street
Milford, MA 01757

RE: CONSIGLI PROPERTY – DILLA STREET

Dear Mr. Villani:

I have given some thought to the question which you have posed on behalf of the Board as to the best way to ensure that the Consigli property remains open space/passive recreation land with no building being permitted on the property.

The first possibility to consider would be a conservation restriction under G.L. c. 184, §§ 31-33. This statute was enacted specifically to allow a conservation restriction, formerly known as a conservation easement, to be established to limit the use of land in order to protect specified conservation values including the natural, scenic or open condition of the land. As it is a statutorily defined restriction, a conservation restriction does not require re-recording as is the case with conventional restrictions under Chapter 184, § 6.

Conservation restrictions differ from other kinds of specified restrictions under the Massachusetts Law such as preservation, water shed, or agricultural preservation restriction also described in § 31. Every conservation restriction must be submitted according to the written procedures of and approved by the Secretary of Environmental Affairs. Any actions to establish a conservation restriction would be taken by Town Meeting and would require a 2/3 vote.

One major difficulty with trying to utilize a conservation easement is that since the Town is now the owner of the property, the Grantee must be a "charitable corporation or trust whose purpose includes conservation of land or water areas ..." G.L. c. 184, § 32. Because the Town would be the Grantor on the conservation restriction, our Conservation Commission could not be the Grantee. In effect we would have to be granting to some agency, perhaps a land trust or conservation trust, to have and exercise the rights under the easement. As I understand it anecdotally, typically these entities want a grant of money to go along with the land in order to "maintain" the land. If your Board is interested in following this route I can explore it in greater detail. It is a bit of an involved process and would, as indicated above,

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require finding a Grantee who would be willing to take it and to whom the town meeting would be willing to grant.

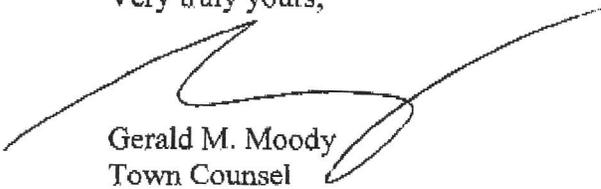
Another method of preserving the land would be to go to Town Meeting to place the property under the jurisdiction and control of the Conservation Commission pursuant to their powers under G.L. c. 40, Section 8C. The property is currently under the jurisdiction of the Board of Selectmen pursuant to the taking and your Board would first have to vote to insert an article in the warrant that would actually transfer the care, custody and jurisdiction to the Conservation Commission and would also require a 2/3 vote under G.L. c. 40, § 15A.

The Conservation Commission would, in the course of exercising its jurisdiction, be required to treat the land as conservation land and would be limited in the things they could do in relation to the land. They certainly could maintain it in its current state and they could maintain it for purposes of passive recreation or active recreation that did not involve significant construction. A further check on the Conservation Commission would be their need for funds to undertake any kind of construction. The Conservation Commission does have some resources but not the kind of resources that would be needed for such items as construction of a building, etc., for that they would have to come to town meeting which would have ultimate control.

Having placed the property under the care, custody and jurisdiction of the Conservation Commission it would be beyond the reach of other town boards unless the Conservation Commission voted to release its interest and this was followed by a town meeting authorization to transfer to another board by a 2/3 vote.

If you or the members of the Board have any questions please advise.

Very truly yours,



Gerald M. Moody
Town Counsel
GMM/jlg