



Emily S. Starr PC
Charles E. Vander Linden
Laura Silver Traiger
Cynthia A. Brown

Starr Vander Linden LLP

625 Main Street
Fitchburg, MA 01420
tel 978-345-6791
fax 978-345-6935

Seven State Street
Worcester, MA 01609
tel 508-754-8882
fax 508-754-3639

To: Trustees
Partridgeberry Woods Homeowners' Trust

From: Charles E. Vander Linden

Re: Restrictions on common land and residential lots

Date: March 7, 2016

The Board has recently presented several questions regarding the status of various restrictions, covenants and easements that govern the land that is part of the Partridgeberry Woods subdivision. I prepared a basic summary of the governing documents and forwarded that summary to the Trustees on March 2, 2016 in an e-mail. A copy is incorporated at the end of this memorandum.

Some questions remained and I have reviewed the documents further in an effort to address those questions. I trust that this memorandum addresses all of the current questions. If clarification is needed or if new questions arise, please contact me.

QUESTION 1:

If the Trustees were to seek to extend certain restrictions on the residential building lots, what requirements would apply to such an extension and what procedures should be followed?

RESPONSE:

The covenants and restrictions that govern the use of the residential lots in the Partridgeberry Woods subdivision were created in 1991. The original Declaration of Protective Covenants dated October 21, 1991 (recorded at Book 21494, Page 14) provides that the covenants and restrictions shall be in effect for a period of 25 years. The original Declaration does not contain provisions for an extension of the original covenants and restrictions. The procedure for imposing covenants and restrictions on land that benefit and burden adjacent property is governed by the provisions of Chapter 184, Sections 27 - 33. Section 33 of Chapter 184 provides that restrictions can only be extended beyond their original term if the instrument creating the restriction contains provisions that allow for such extensions. The original Declaration of Protective Covenants for Partridgeberry Woods does not contain such a provision. As a result, the original restrictions cannot be extended by the

use of the statutory provision that, in some cases, permits an extension for an additional twenty years if approval is obtained from at least fifty percent of the owners of property covered by the original restrictions.

If the Partridgeberry Woods homeowners wish to have the covenants and restrictions apply beyond the original 25-year term, it will be necessary to create a new set of covenants and restrictions that limit all of the 88 lots. For such restrictions to be effective, the following requirements must be satisfied:

1. Written approval of new restrictions and covenants must be obtained from all of the owners of the 88 lots in the subdivision.
2. To make certain that all lots would be subject to the new restrictions, even if there were later foreclosure actions against one or more owners, written approval of new restrictions and covenants must be obtained from all of the lenders that hold mortgages on the 88 lots in the subdivision.
3. A new Declaration of Protective Covenants, with written approval of all owners and mortgage holders attached, would need to be recorded at the Registry of Deeds.

Creating new restrictions would be a major undertaking. And it would not be prudent to pursue such a course of action unless the Trustees were certain that they could obtain all of the necessary approvals. Most owners of residential lots would not be prepared to agree to restrictions on their own lots unless they had prior assurances that all of the other lots would also be subject to the new restrictions. In sum, there are major barriers to creating new restrictions and covenants.

QUESTION 2:

Other than the four restrictions and covenants identified in the March 2, 2016 e-mail memorandum, are there any other covenants or restrictions that govern the residential lots in the Partridgeberry Woods subdivision?

RESPONSE:

The four restrictions and covenants identified in the March 2, 2016 e-mail (the substance of which is restated at the end of this memorandum), are the only substantive restrictions on the lots in the Partridgeberry Woods subdivision.

In the course of completing the construction and development of the subdivision, the developers (Robert Taisey, and later, Robert Hicks and Homestead Real Properties, Inc.) recorded certain amendments, covenants and other documents (including at least seven such documents) at the Registry of Deeds. Those documents were filed to satisfy certain requirements of the Groton Planning Board, to correct errors, to clarify that the owners of all 88 lots had a beneficial interest in the Partridgeberry Woods Homeowners' Trust and were required to pay assessments and to ensure that the developer retained control of the Trust until the development was completed. Those additional documents were largely housekeeping documents that enabled the developer to proceed with the completion of the subdivision. They do not contain any provisions indicating that the original Declaration of Protective Covenants was amended in a manner that would allow the restrictions to be extended.

The restrictions governing the residential building lots are contained in the Declaration of Protective Covenants that was filed in 1991. The permanent restrictions that govern the common area land (Parcels A, B, C, D and F) are contained in the two documents entitled "Conservation Restriction and Easement." All of those documents are summarized below.

SUMMARY OF STATUS OF COVENANTS, RESTRICTIONS & EASEMENTS
(From March 2, 2016 E-Mail to Trustees)

The Partridgeberry Woods property is subject to at least four separate documents that create covenants, easements and restrictions. They include the following:

1. Conservation Restriction & Easement – Book 21403, Page 593
(recorded on September 9, 1991).

- This is a permanent conservation restriction, approved by the Commonwealth and held by the Town of Groton.
- The restrictions set forth in this document govern "Parcel A," which contains 44.9 acres.
- This document grants the following rights to the public: "There is further hereby granted to the general public the right to utilize trails located on said premises and to pass and re-pass on said trails as trails located on conservation land are commonly utilized within said Town of Groton, and to otherwise enjoy said premises subject to such rules and regulations as may be promulgated by the Groton Conservation Commission, provided nevertheless that any such rules and regulations shall not prohibit residents of the general public from utilizing said premises from dawn to dusk..."

2. Conservation Restriction & Easement – Book 21403, Page 603
(recorded on September 9, 1991).

- This is a permanent conservation restriction, approved by the Commonwealth and held by the Town of Groton .
- The restrictions set forth in this document govern "Parcels B,C, D and F," as shown on Plan No. 1475 of 1988, recorded at Book 19424, Page 049.
- This document grants the following rights to the public: "There is further hereby granted to the general public the right to utilize trails located on said premises and to pass and re-pass on said trails as trails located on conservation land are commonly utilized within said Town of Groton, subject to such rules and regulations as may be promulgated by the Partridgeberry Woods Homeowners Association or such other entity created by the Grantor shall receive the approval

of the Groton Conservation Commission so as to ensure that such regulations are fair, reasonable and balance the interests of those individuals who make use of said trails with the right of residents of the Partridgeberry Woods Subdivision to the quiet and peaceful enjoyment of the property, which said regulations shall not preclude the quiet enjoyment by the general public from dawn to dusk..."

3. Declaration of Protective Covenants – Book 21494, Page 14

(recorded on October 25, 1991).

- Pursuant to Section 17 of this Declaration, it shall be in effect for a period of 25 years. This Declaration contains provisions that many developers use when subdivisions are constructed.

4. Declaration of Covenants and Restrictions – Book 24654, Page 183

(recorded on June 28, 1994).

- The original Declaration referred to Lots 15-36; this Declaration refers to Lots 1-14 and 37-56.
- This document makes it clear that each lot in the subdivision has a 1/88 ownership beneficial interest in the Homeowners Trust.

This e-mail memorandum dated March 2, 2016 provides basic information concerning the documents that govern Partridgeberry Woods. The preliminary conclusions and responses to the original questions of the Trustees based upon the review of these documents include the following:

1. All four of the documents described above govern the rights of residents and the public in land in the Partridgeberry Woods Subdivision.
2. The two permanent Conservation Restrictions and Easements provide a public right of access to Parcels A, B, C, D and F. Partridgeberry Woods cannot prevent public access and should not install signs to attempt to prohibit public access. Partridgeberry Woods could adopt reasonable rules and regulations governing the use of Parcels B, C, D and F, provided that those rules have been approved by the Conservation Commission and provided that they do not interfere with the public's quiet use and enjoyment of those parcels from dawn to dusk.
3. The two permanent Conservation Restrictions and Easements each provide that the potential liability of the Partridgeberry Woods Homeowners Association is governed by the provisions of the Massachusetts recreational use statute – Chapter 21, Section 17C. Thus, Partridgeberry Woods has the benefit of the protections of that statute. (This statute makes it difficult for a

person who is using recreational land to pursue a claim arising out of alleged injuries.) Partridgeberry Woods has this protection without the need to install any signs. Nonetheless, Partridgeberry Woods could install a sign advising members of the public that they use the property at their own risk. Also, it would be prudent for Partridgeberry Woods to consult with its own insurance agent and maintain adequate insurance against potential claims arising from the use of the common land.

4. If Partridgeberry Woods wishes to adopt rules and regulations governing parcels B,C, D and F, the proposed rules should be drafted and then presented to the Conservation Commission for approval.
5. If Partridgeberry Woods wishes to have rules and regulations adopted by the Conservation Commission for Parcel A, proposed rules and regulations should be prepared and then submitted to the Conservation Commission with a request for their adoption.