

Draft  
5/18/14

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2582CV00808

TOWN OF WESTWOOD, by and through its SELECT BOARD

vs.

WESTWOOD LAND TRUST, INC.

**MEMORANDUM OF DECISION AND ORDER ON  
PARTIES' CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS**

This is an action by the Town of Westwood, by and through its Select Board ("Town"), seeking a declaration regarding 665 Clapboardtree Street (the "Premises"), property owned by the Town subject to a claim of right of the defendant, Westwood Land Trust ("Trust"), under a Conservation Restriction held by the Trust. The matter is now before the court on the parties' cross motions for Judgment on the Pleadings. For the reasons that follow, the Trust's motion is **ALLOWED**, and the Town's motion is **ALLOWED** in part and **DENIED** in part.

**BACKGROUND**

The Premises, 665 Clapboardtree Street, also known as the Prout Farm, consists of two parcels: Lot A, which contains a single-family home, and Lot B, which is unimproved land. On May 12, 2000, the owner of the Premises, Duncan M. McFarland, granted a Conservation Restriction over the Premises to the Trust. The Conservation Restriction identified the Premises as consisting of 28 acres of land: (1) a 22.654 acre parcel, containing open hayed fields, forested land, and wetlands ("Area 1"); (2) a 3.13 acre parcel, containing hayed fields, specimen trees, utilities, and septic facilities for the existing residence ("Area 2"); and (3) a 3.18 acre parcel containing the residence ("Area 3").

The Conservation Restriction states as its “purpose” that: “The Premises contain unusual, unique or outstanding qualities, the protection of which in their predominately natural or open condition will be of benefit to the public. These qualities and public benefits resulting from the conservation of the Premises include . . .:” (1) substantial wetlands, forests and open fields, providing a diversity of wildlife habitat, including early successional habitat; (2) views and vistas across its open fields from Clapboardtree Street (a public way) providing substantial scenic value to the public; and (3) prime agricultural soil. Conservation Restriction, Section II A. (Ex. A to Complaint).

In this respect, the Conservation Restriction expressly prohibits, among other things, “cutting, removing or otherwise destroying trees, grasses or other vegetation or the use of pesticides or biocides” in Area 1 unless the use does “not materially impair the purpose of this Conservation Restriction or other significant conservation interests” and the Grantee, that is the Trust, approves the “[a]gricultural activities, including in connection therewith, and without limitation, the use of fertilizers and herbicides, clearing, plowing, planting and similar agricultural activities . . .” *Id.* at Section III A. and B.

Further,

[w]henver notice to or approval by [the Trust] is required under the provisions of this Section III, [the Town] shall notify [the Trust] in writing not less than 60 days prior to the date [the Town] intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit [the Trust] to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. . . . Unless otherwise specifically stated herein, [Trust] approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Conservation Restriction.

*Id.* at Section III. E.

On June 9, 2000, McFarland conveyed Lot B (containing Area 1), subject to the Conservation Restriction, to the Westwood Preservation Society. On April 6, 2001, the Westwood Preservation Society conveyed Lot B (containing Area 1), subject to the Conservation Restriction, to the Town.

On March 5, 2024, the Town provided notice to the Trust that, on January 10, 2024, the Town's Conservation Commission had "approved the agricultural exception" for Lot B. The Town stated that it intended to issue a Request for Proposal to allow agricultural use on Lot B for a five-year lease term. The Town attached to its notice an "Agricultural Use and Conservation Plan" from Bean Farm, a commercial farming business located on the border of the Premises. This Plan detailed that Bean Farm sought to enter into an agreement with the Town to farm eight acres of Lot B. In relevant respect, Bean Farm stated that, "[w]ithout use of the Prout Farm land, the numbers just don't work for The Bean Farm to continue as a viable and sustainable business." (Ex. E to the Complaint).

On April 3, 2024, the Trust rejected the Town's proposal. The Trust concluded that the proposed farming use would, among other things, destroy the existing natural view scape and replace it with a commercial farming operation, destroy the existing nature meadow, threaten the health of a nearby stream and wetlands, introduce herbicides and pesticides, uproot natural plantings, invite invasive species, and impose substantial costs to retore the meadow once the proposed farming ended.

On November 11, 2024, after attempted negotiations by the parties, the Trust stated that it would not consent to agricultural use on any part of the restricted land. This suit, in which the Town requests declaratory and injunctive relief, followed. In its complaint, the Town requests the court (1) declare that the Conservation Restriction allows agricultural uses and the Trust

cannot categorially prohibit all agricultural uses, and (2) issue injunctive relief enjoining the Trust from denying agricultural uses on the Premises. Thereafter, the Trust counterclaimed and sought a declaration that the Trust did not unreasonably withhold its consent to the Town's proposed agricultural use of the Premises.

### **DISCUSSION**

A Mass. R. Civ. P. 12(c) motion for judgment on the pleadings is akin to a motion to dismiss that argues that the complaint fails to state a claim upon which relief can be granted. *Jarosz v. Palmer*, 436 Mass. 526, 529 (2002). Judgment on the pleadings is appropriate in “the rare case where the answer admits all the material allegations of the complaint.” *Rabinowitz v. Schenkman*, 103 Mass. App. Ct. 538, 540 (2023) (quotations and citation omitted). In deciding a Rule 12(c) motion, all facts pleaded by the nonmoving party must be accepted as true. *Minaya v. Massachusetts Credit Union Share Ins. Corp.*, 392 Mass. 904, 905 (1984).

In 1969, the Massachusetts Legislature enacted the Conservation Restriction Act, G.L. c. 184, §§ 31-33, which created a framework to protect conservation lands, historic properties, and agricultural lands through the use of what are essentially negative easements. *Wildlands Trust of Southeastern Massachusetts, Inc. v. Cedar Hill Retreat Center, Inc.*, 98 Mass. App. Ct. 775, 776 (2020). “In passing the Conservation Restriction Act, ... the Legislature recognized, and sought to protect, the public benefits of conserving land and water in their ‘natural, scenic or open condition’ by government bodies and qualified charitable corporations or trusts.” *Weston Forest & Trail Ass’n v. Fishman*, 66 Mass. App. Ct. 654, 658 (2006), quoting G.L. c. 184, § 31.

Under a conservation restriction, the grantor voluntarily restricts the use of its land. *Wildlands Trust of Southeastern Massachusetts, Inc.*, 98 Mass. App. Ct. at 776. “The grantor maintains possession [of the land] but grants a nonpossessory interest in the property to a holder

— generally a government entity or charitable organization — which agrees to protect the natural aspects of the property.” *Id.*, citing G.L. c. 184, § 32. In this manner, G.L. c. 184 furthers “the public benefits of conserving land and water in their ‘natural, scenic or open condition.’” *Id.*, quoting G.L. c. 184, § 31.

Conservation restrictions are interpreted in the same manner as other recorded instruments. *Weston Forest & Trail Ass’n*, 66 Mass. App. Ct. at 661. The court must “give effect to the intent of the parties as manifested by the words used, interpreted in the light of the material circumstances and pertinent facts known to [the parties] at the time it was executed.” *Chatham Conservation Found., Inc. v. Farber*, 56 Mass. App. Ct. 584, 590 (2002). “In addition, the restriction must be construed beneficially, according to the apparent purpose of protection or advantage ... it was intended to secure or promote.” *Id.* The court’s interpretation of the meaning of a restriction’s unambiguous terms and provisions is a question of law. See *Wildlands Trust of Southeastern Massachusetts, Inc.*, 98 Mass. App. Ct. at 781.

McFarland, as the grantor, restricted the use of his land because “the Premises contain unusual, unique or outstanding qualities, the protection of which in their predominately natural or open condition will be of benefit to the public.” The Town, as the current Grantor, by assignment from McFarland to the Westwood Preservation Society to the Town, maintains possession but the Trust, which agreed to protect the natural aspects of the property, has a nonpossessory interest in the land. Under the Conservation Restriction, agricultural use is prohibited except with approval from the Trust, which may not be unreasonably withheld, but also shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of the Conservation Restriction.

The unambiguous purpose of the Conservation Restriction was to preserve the Premises

for the public not for the benefit of a third-party commercial agricultural operation. While the court agrees and declares that the Trust cannot categorically prohibit all agricultural uses of the Premises, cf. *Twomey v. Commissioner of Food & Agric.*, 435 Mass. 497, 502 (2001) (where parties to agricultural preservation restriction agreed on method for approval of dwelling, it was reasonable to assume that they intended that some form of dwelling could be built that would not defeat purposes of Conservation Restriction Act and thus be acceptable), the Trust's denial of the Town's request at issue, to permit a third-party to commercially farm the land and thereby derive private benefit from what it intended as a public resource did not violate the Conservation Restriction.

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that the Town's Motion for Judgment on the Pleadings is **ALLOWED** in part and **DENIED** in part, and the Westwood Land Trust's Motion for Judgment on the Pleadings is **ALLOWED**. The Town's motion is **ALLOWED** to the extent it requests a declaration that the Trust cannot categorically prohibit agricultural uses of the Premises and **DENIED** otherwise. The court hereby **DECLARES** that while the Trust cannot categorically prohibit all agricultural uses of the Premises, the Trust's denial only of the Town's request at issue here, that is to essentially allow a third-party to commercially farm the land, did not violate the Conservation Restriction. The case is **DISMISSED**.

*/s/Rosemary Connolly*

Rosemary Connolly  
Associate Justice of the Superior Court

**DATE:** May 7, 2026