

Town of



AMHERST

Massachusetts

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MEMORANDUM

TO: Planning Board
FROM: Christine Brestrup, Senior Planner
RE: W.D. Cows, Notice of Intent to Sell, Chapter 61 Withdrawal
Assessors Map 6A-91, 6A-96 and 6A 84
Planning Board's Role in Chapter 61 Withdrawal
DATE: July 10, 2013

The Select Board has requested that the Planning Board make a recommendation to the Select Board about whether the Town of Amherst should exercise its right of first refusal under MGL Ch. 61 to purchase 154 acres owned by W.D. Cows, located in North Amherst between Henry Street, Market Hill Road, and Flat Hills Road. The parcels are shown on the Town of Amherst GIS maps as Map 6A-91, 6A-96 and 6A-84.

As Board members are aware, W.D. Cows has been working with Landmark Properties, a firm based in Athens, Georgia, to develop "The Retreat" in North Amherst, a proposed residential development intended to include approximately 190 dwelling units of student housing, and being designed as a cluster subdivision.

The properties proposed for development are in a preferential property tax designation established under MGL Ch. 61. Chapter 61 is a state law that "promotes conservation of woodlands by providing tax incentives to manage forests." To obtain a lower tax status under Ch. 61, property owners must enter into 5 year contracts to manage their property for forest management (in this case lumber and cordwood). As part of the development process, W.D. Cows must withdraw the property proposed for development from Chapter 61 prior to selling it to another party, and must pay any 'avoided' back taxes owed during the 5 year period of the current contract.

In April 2013 W.D. Cows submitted to the Town of Amherst a Notice of Intent to Sell the subject property, under the provisions of Chapter 61, Section 8 of the Mass General Laws. Along with the Notice, W.D. Cows submitted a Purchase and Sale Agreement from the prospective buyer, offering to buy the property for a sum of \$6,500,000.00.

Amherst Town Counsel, Kopelman and Paige, has reviewed the Notice of Intent to Sell and the Purchase and Sale Agreement and has found the submittal to be in order and the Purchase and Sale Agreement to be a bona fide offer.

As part of the Chapter 61 withdrawal process established in state law, the town has the "right of first refusal" to purchase the property. That is, the town has a "first chance" to purchase the property for the amount quoted in the Purchase and Sale Agreement, before the property owner can sell the property to the prospective buyer.

Ultimately, the Select Board makes the decision about whether to exercise the "right of first refusal" but the Select Board typically seeks the advice and recommendations of the Planning Board and the Conservation Commission.

The Planning Board and Conservation Commission, with help from their respective staffs, assess the property and determine whether they think that the property is worth purchasing for the price quoted in the Purchase and

Sale Agreement. Their recommendations are forwarded to the Select Board for its consideration. In making their recommendations, the Planning Board and Conservation Commission evaluate whether the property would fulfill the planning and conservation goals of the community as outlined in the Master Plan and the Open Space and Recreation Plan. The Master Plan and Open Space and Recreation Plan are available for review on the Town of Amherst website at:

<http://www.amherstma.gov/index.aspx?NID=526>

and

<http://www.amherstma.gov/index.aspx?NID=629>

Withdrawal from Chapter 61 is the first step in the process of determining the disposition of land, whether the community exercises its right of first refusal, whether the property will be sold to other parties, and whether any permits are sought for development of the property. Land that is in Chapter 61 is not available to be developed for any use other than forest land until it is removed from Chapter 61.

Included in the Planning Board packets are several documents intended to aid the Board in making its determination and offering recommendations to the Select Board:

- A copy of the Notice of Intent to Sell, the Purchase and Sale Agreement, associated maps and landowner's affidavit, submitted by the landowner;
- Excerpts from "Conservation and Land Use Planning under Massachusetts' Chapter 61 Laws: a Primer for Cities, Towns & Conservation Organizations", published by the Mount Grace Land Conservation Trust;
- A copy of Mass General Laws Chapter 61, Section 8, describing the process for removing land from Chapter 61;
- Maps of the property for the Board's information from the Amherst GIS Viewer;
- A copy of the Amherst Master Plan Land Use Policy Map;
- A copy of the Open Space and Recreation Plan's Map 8, Seven Year Action Plan;
- Issue Assessment prepared by Planning Department;
- Emails and letters received from the public commenting on the Chapter 61 withdrawal and the development proposed for the site;
- Email from Cinda Jones of W.D. Cows regarding developable sites in Amherst, with accompanying maps.

Once the property has been removed from Chapter 61, there will still be many layers of land use permitting that need to be navigated by the landowner and developer in order to bring any project to fruition, including careful review by the Conservation Commission (there are wetlands and streams on the site) and careful review by the Planning Board (most likely a Cluster Subdivision Review and Site Plan Review).

In addition to the reviews noted above, there may be other state and local permits required for the proposed development. The permitting path will become more clearly defined as the developer and landowner define the project and move forward with its design.

As of now the project, "The Retreat", is in the conceptual phase. There will be many opportunities for members of the public to comment on the project if it proceeds through permitting to development.