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RECEIVED
DEC 20 2004

VIERI G. VOLTERRA
OF COUNSEL

December 15, 2004

Seekonk Board of Selectmen
Seekonk Town Hall
100 Peck Street
Seekonk, MA 02771

RE: Opinion No. 2004-11
1990 Land Swap Time Line/Brigham Farm

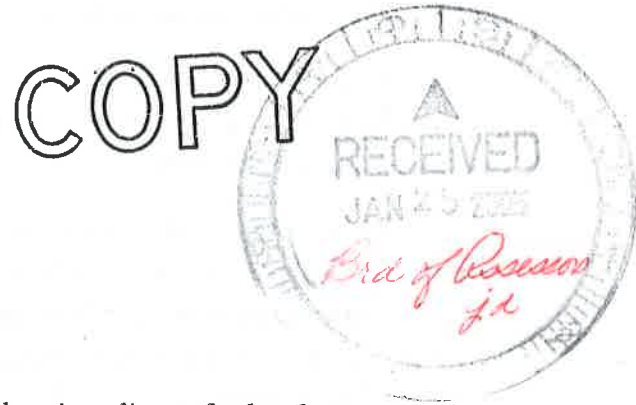
Dear Board of Selectmen:

I have received the folder allegedly representing the time line of a land swap that took place in 1990 as presented to the Board by Paul Bowen.

I note that the conveyance of December 23, 2003 from the Maureen Donnell Family Trust to Triple Eagle Enterprises, Inc. purports to transfer "any right, title and interest that seller may have to Lots 16 and 17 of the Brigham Farm subdivision plan..." approved in 1989. I further note that the deed to the Town of Lots #16 and #17 was from the Brigham Realty Trust.

As of now, of course, title to those Lots, #16 and #17, lies with the Town. Any possible re-conveyance would have to be to the Brigham Realty Trust or its successor.

In the folder, there are a number of documents that indicate that the original proposal was to transfer only Lot #17 to the Town, with the additional transfer of an easement through Lot #16 for access. (See Town Meeting vote, Document 6) The Planning Board and the Town Executive Secretary were extremely concerned about what land was going to be deeded to the Town (Document 7, 8, 9, 10, 11, 12, 13, 14). Furthermore, the Developer's Engineer told the Planning Board on October 11, 1988 "Lot 16 is designated as unbuildable." (Document 14). Document 23 is a two-page document of the Planning Board Public Hearing of May 23, 1989. There is a reference by the Developer's Engineer that "Lot 16 will be left as open land (final use not determined at this point.)" I noted in reviewing this document that the Minutes appeared to be incomplete. I then asked the Planning Board staff to send me any other pages of the Meeting Minutes, if any. After receipt of same, I realized why one page had been omitted. At one point on this omitted page, the owner, Sally Baer, says.



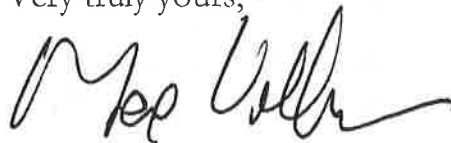
December 14, 2004
Board of Selectmen
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“We would like a conservation easement on to Lot 17. Lot 16 may end up going to the Town as well. (emphasis supplied). Thereafter, both Lots were transferred to the Town, with no mention of any easement. Of course, the transfer of Lot #16 to the Town eliminated the need to have an easement through Lot #16.

In order for the successor interest to Sally Baer to prevail in re-claiming Lot #16, it would need to establish a mutual mistake by the parties, which would permit a reformation of the deed.

In view of the above facts, as well as the obvious attempt by the current developer to present incomplete and misleading information, and in view of the fact that no easement was ever fully described and transferred to the Town, I do not believe that there was a mutual mistake. The evidence supports the view that Sally Baer intended to transfer both Lots #16 and #17, her own counsel prepared the deed, and both she and the co-trustee signed the deed. It has been fourteen (14) years since all this took place. One would have expected the Trustees of the Brigham Realty Trust to have acted upon any alleged error, if there was such an error, many years ago. Of course, no such claim was ever made for fourteen years. Therefore, I conclude that the land swap ought to remain as it was originally carried out by the parties.

Very truly yours,

A handwritten signature in black ink, appearing to read "Max Volterra", written in a cursive style.

Max Volterra

MV:rbs

Cc: Town of Seekonk Planning Board

RECORD LOT NO.	ASSESSORS PLAT NO. 36 (o/f 36-lot 1 in 1990)	LOT NO. 16	BOOK DEED	PAGE
Lot 16 BRIGHAM FARM	BRIGHAM REALTY TRUST, Trustees: Sally B. BAER & James P. DAVIS		4614	173
	SEELKONK, Town of 1990 50' — EASEMENT 11/29/07		17188	313

RECORD LOT NO.	ASSESSORS PLAT NO. 36 (Dropped in 1990)	LOT NO. 1	DEED BOOK	PAGE
	Charles W. & Abbie F. Lillibridge		568	86
			589	101
			681	440
	H. Marion Lillibridge		855	258
	1971 Probate 132312			
	Florence Brigham & Charles Wilmarth Sr.			
	BRIGHAM REALTY TRUST, (Sally B Baer & James P. Davis, trustees)		1989 4176	238
	(1/2 int) CARABOOLAD, Geoffrey S.		1989 4221	233
	Ref		1990 4449	140
	Corr. Deed		1990 4449	141
	Corr. Deed		1990 4614	161
	Corr Deed		1990 4614	162
	BRIGHAM REALTY TRUST (SEE BRIGHAM FARM SUB-DIV)		1990 4614	165

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