

Amendments eliminate 'Chapter Land' laws' ambiguities

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On March 22, the amendments to the so-called Chapter Land statutes, G.L.c. 61A, 61B and 61C took effect.

The amendments, Chapter 394 of the Acts of 2006, put forward by Sen. Pamela P. Resor, were developed after a lengthy collaborative process involving representatives of the farming and forestry communities, land trusts, municipalities, assessors and the executive branch of state government.

More than a dozen meetings were held and drafts were circulated for comment over many months in an attempt to craft a bill that was satisfactory to this diverse group and likely to be passed, despite numerous failed prior attempts.

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at amending the statutes.

The statutes provide a favorable tax classification for land that is held and used in accordance with the statutory requirements, that is for forest (Chapter 61A), agricultural and horticultural (Chapter 61B), and open space and recreational purposes (Chapter 61C).

The recent amendments clarify and codify practices that have developed based upon a fair reading of the statutes, interpretations by the Department of Revenue and case law, and eliminate some ambiguities in the statutes.

As with any statutory amendments, although many questions have been answered, others will be raised. Many minor and more subtle changes have been made that should be closely analyzed whenever such a transaction arises.

The original statutes, adopted in 1973, authorized Chapter Lands to be assessed at less than their development value. Landowners who took advantage of the favorable tax classification committed to maintaining the land in accordance with the statutory requirements for a specified amount of time, and incurred a financial penalty upon early removal from classification. In addition, the landowner agreed to provide the municipality in which the property was located with a 120-day right of first refusal to purchase the land in the event it was sold for or converted to a residential, industrial or commercial use while it was classified as Chapter Land.

The ROFR was subject to assignment by the municipality to a qualified nonprofit conservation organization. Under the statutes, the process and requirements for triggering and exercising the ROFR were unclear, and inconsistencies among the three statutes also led to confusion and numerous legal challenges. The

amendments are an attempt to clarify the statutory requirements and to establish a more uniform and efficient administration of land subject to the statutes.

By far, the most significant change in the statutes is the clarification of the ROFR provisions. The amendments increase the time period during which the ROFR is effective, outline the parties' responsibilities in the event of a sale or conversion, define a bona fide offer and elaborate on the assignment process. They also give the municipality or assignee access to the property and clarify due diligence rights and timing. The amendments have extended the duration of the ROFR by one year.

Addressing the question of the landowner's responsibility when delivering a notice of intent to sell or convert Chapter Land for another use, the amendments specify in far greater detail the documentation that must be included with the notice of intent.

Perhaps one of the most important changes to the statutes is the inclusion of a definition of a bona fide offer. This has been an often litigated issue and one


in which municipalities have been particularly vulnerable.

For the purpose of a Notice of Sale, the amendments define a bona fide offer as "a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed."

This language makes it clear that a purchase and sale agreement containing a purchase price that fluctuates depending upon the number of lots or units actually permitted or presupposes changes to the current zoning does not constitute a bona fide offer under the statutes.

Although a developer may be willing to invest in the costs associated with due diligence without knowing the outcome of the permitting process, it may be re-

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lucant to take on this cost if there is a possibility that a municipality will exercise its ROFR after it has expended significant funds to obtain the necessary development.

The amendments also clarify the conversion process and the division of responsibility relative to obtaining an impartial appraisal, and they establish a process that may include up to three appraisals.

In the case of a conversion, the municipality has an option to purchase the land at full and fair market value determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee. The amendments require that the original appraisal be completed and delivered to the landowner within 30 days after the notice to convert to the municipality.

The amendments are far from perfect, leaving many ambiguities. While they may raise further questions to be an-

swered by the courts, they go a long way in responding to issues that have plagued transactions involving Chapter Land. When reviewing a Chapter Land transaction, one should carefully examine each section to ensure compliance.

The writers, who have been involved on behalf of municipalities and a non-profit conservation organization, welcome the amendments and are hopeful that many of the uncertainties, particularly of the ROFR process, have been eliminated by the amendments. Resor's office has already been made aware of some of the ambiguities existing in the amendments and it is likely that a representative group will be convened in the future to discuss how best to address and repair problems that municipalities, land conservation organizations and others experience with the amendments.

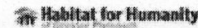
The writers welcome comments about the amendments and would be pleased to pass along comments and concerns to the appropriate recipients, in order to make the statutes work even better.

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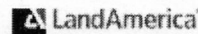
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