

STATEMENT OF TOWN COUNSEL

On May 17, 2021, a Citizens Petition article, Article 26, was presented at Annual Town Meeting.

In relevant part, the article stated as follows:

“to authorize and direct the Board of Selectmen to transfer care, custody, maintenance and control of [the Wildcat Land] totaling 5.93 acres to the Conservation Commission, to be held for conservation, passive recreation and historic preservation purposes in perpetuity, and to authorize and direct the Board of Selectmen to request Town Counsel to prepare the appropriate documents for recording to transfer care to the Commission, in the deed.”

Shortly after the article was presented to the Select Board and well prior to Town Meeting, the proposed article was sent to me as Town Counsel for review and comment by the former Town Administrator, Peter Morin.

I felt then the proposed article was not lawful. My opinion as Town Counsel at the time was that (1) the Wildcat Land (app. 6 acres off Wildcat Land) that was the subject of this article was previously set aside for affordable housing by a prior 2004 Town Meeting vote, (2) the Select Board which had charge of the land had not voted that the land was no longer needed for affordable housing under Gen. L. c. 40 §15A (which is a precondition to any Town Meeting vote), and (3) that Town Meeting, as the legislative branch of the Town of Norwell, had no authority to direct the executive branch of the town, the Select Board, to do anything that was discretionary in nature. My opinion was communicated directly to representatives of the citizens' group who authored Article 26 again well prior to Town Meeting.

All articles submitted by Citizens' Petition are voted on by Town Meeting as a matter of law regardless of their validity. While Article 26 did pass by more than a 2/3 vote, because the article was not legal as I had advised the Select Board, Article 26 did not compel any conduct by the Select Board. Following the May 17, 2021 Town Meeting, I explained on multiple occasions that the vote was not binding on the Select Board for the same reasons I stated.

I was advised following the Town Meeting, that the Select Board desired to have another experienced Town Counsel review the matter – in effect obtaining a second opinion. In the Fall of 2021, Attorney Lauren Goldberg of the municipal law firm of KP Law, authored a written opinion that concurred with my prior opinions.

After the Select Board refused to conclude that the Wildcat Land was no longer needed for affordable housing in late 2021, several of the same persons who sponsored Article 26 filed a lawsuit in the Land Court against the Town and the Select Board members who continued to believe that the land was needed for affordable housing. Their principal claim was that the Wildcat Land was not held for the specific purpose of affordable housing and that Town Meeting's vote compelled the Select Board to transfer the Wildcat Land to the Conservation Commission.

The lawsuit filed in late December 2021 did not linger it was the subject of immediate dispositive motion practice filed within a matter of weeks intended to end the case.

The Land Court (Smith, J.) heard cross arguments on dispositive motions in early March of 2022. Brian Carroll, an attorney and a plaintiff, argued before the Land Court on behalf of himself and his co-plaintiffs and I as Town Counsel argued for the Town of Norwell. The Town's position was laid out clearly in a Memorandum of Law which is a public record.

On June 22, 2022, the Land Court entered a Judgment in favor of the Town of Norwell and the Select Board and issued a Decision dated the same date explaining the Court's reasoning for entering the Judgment.

On Page 10 of the Land Court decision, Judge Smith stated:

*"The Select Board may not be compelled to convey the Wildcat Land to the conservation commission or to any other board for a particular purpose, until it determines that the land is no longer needed for affordable housing. Only then, after a two-thirds majority vote of the town meeting, will the Select Board be properly authorized to transfer the land to the conservation commission for conservation, passive recreation, or historic preservation purposes. **Thus, the vote of the 2021 town meeting to transfer the Wildcat Land to the conservation commission was ineffective.**"*

Two of the ten original plaintiffs who brought suit against the Town of Norwell, Brian Carroll and Tim Wall, then filed an appeal with the Appeals Court. Once briefed, the matter was quickly transferred to the Supreme Judicial Court (SJC) at the request of the SJC on its own initiative. The Massachusetts Association of Realtors (MAR) also filed an appellate brief called an amicus brief on September 5, 2023 asserting, as did I, that the Land Court correctly rejected the plaintiffs' claims because their lawsuit was at odds with the statutes that govern how towns devise and manage its property.

On January 5, 2024, the SJC issued its decision on the appeal and determined that the Land Court's judgment in favor of the Town of Norwell which concluded that the May 17, 2021 Town Meeting vote was **ineffective** was **correct**.

In reviewing the SJC decision, the Court rejected the claim advanced by the remaining plaintiffs, Carroll and Wall, that the Town was required to file restrictions or transfer control of the Wildcat Land property to specific entities to hold it for a specific purpose under Gen. L. c. 40 §15A (as they claim was required in *Lindsay v. Hanson*) and instead concluded that it would apply a totality of the circumstances test in assessing whether land was held for a specific purpose as was previously applied in the context of assessing whether land was subject to another form of protection as open space land under Article 97. See *Smith v. Westfield*, 478 Mass. 49, 63-64 (2017).

The Court went on to consider the extent to which the totality of the circumstances compelled the conclusion that the Wildcat Land was held for the specific purpose of affordable housing, as

contended by the Town, and further concluded that the Town “put forth undisputed evidence showing that the town dedicated the Wildcat land for affordable housing” rejecting each and every contention by the plaintiffs, Carroll and Wall.

I am aware that persons have since claimed that since the new successor Select Board has come to a different conclusion than its predecessor Select Board and voted after the SJC decision was issued in January 2024 that the Wildcat Land is no longer needed for affordable housing *that the proposed Town Meeting articles are not needed to give the Select Board the authority to transfer the land to the Conservation Commission. **This is not accurate.*** The Land Court judgment deemed Article 26 “ineffective” and that decision now affirmed by the SJC voided that vote. If the Town wishes to further transfer the Wildcat Land that the SJC has concluded with finality was held for affordable housing purposes, in order to comply with Gen. L. c. 40 §15A, the Town Meeting must conduct a new vote and that vote, by statute, must pass by a two-thirds majority vote. *Any contrary opinion is false and inconsistent with the SJC and Land Court decisions and now final Land Court judgment.*

I am also aware that persons have claimed that Article 26 that passed by a two-thirds vote on May 17, 2021 at Annual Town Meeting also had some remaining legal validity and either in actually created a conservation restriction on the Wildcat Land or in effect restricted the Wildcat Land for conservation purposes. **This is also absolutely false and directly apposite what the courts have determined about the effect of Article 26 which is now void.** *Article 26 from May 17, 2021 is of no force and effect after the Land Court and SJC decisions and is a legal nullity.*

The only correct view of the present circumstances and the status of the Wildcat Land is that the successor Select Board has taken the preliminary step undisputedly required under Gen. L. c. 40 §15A and declared the Wildcat Land is no longer needed for affordable housing and now Town Meeting **may authorize** the Wildcat Land to be transferred or used for another specific purpose. It is my opinion that the final authority and disposition of the Wildcat Land, if authorized by Town Meeting, rests in the sound discretion of the Select Board.

Finally, the only authorized statements that anyone should attribute to Town Counsel are my own statements contained in the legal filings in the Land Court or Supreme Judicial Court or in this statement on behalf of the Town. Any other statements that describe my position or opinions as it relates to this matter are not authorized or endorsed and do not represent my view of the status of the land or the state of the law as applied to it.

My expectation is that Town Meeting will decide this issue on May 6, 2024.

Robert W. Galvin, Esq.
May 4, 2024