

Town Counsel Will Be Present To Discuss Petition To Probate Court RE: 5 Concord Rd

DRAFT as of 12/7/17\*

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

PROBATE AND FAMILY COURT  
C.A. NO.

TOWN OF WAYLAND,

Plaintiff

v.

MAURA HEALEY, as she is the  
ATTORNEY GENERAL OF THE  
COMMONWEALTH OF MASSACHUSETTS,

Defendant

COMPLAINT

Introduction

1. This petition is brought by the Plaintiff, the Town of Wayland, acting by and through its Board of Selectmen and Library Trustees (collectively, the "Town") pursuant to G.L. c. 214, § 10B, seeking the application of the doctrine of cy pres or deviation to enable the Town to discontinue use for library purposes of a certain parcel of property donated by Warren Gould Roby (the "Roby Parcel") and the building thereon, known as the Town of Wayland Free Public Library building (the "Library"), located at 5 Concord Road in Wayland, MA. The Town holds the Roby Parcel and that portion of the Library situated on the Roby Parcel in trust under a charitable trust for library purposes. The Roby Parcel and the Library are no longer suitable for library purposes, and the Town is seeking to construct a new library on a different property. Once the new library is constructed, the Town proposes to use the existing Library, including that portion on the Roby Parcel, for public purposes related to the Library but not as a primary or branch library. Such proposed re-use of the existing Library, specific to the Roby Parcel, includes a cultural center, featuring visual arts, music performances, studio use, and exhibits on the history of Wayland and Sudbury River, as well as an art and technology/innovation center.

\* AN UPDATED DRAFT MAY BE AVAILABLE BEFORE OR AT THE 12/11/17 MEETING.

The Parties

2. The Town of Wayland (the "Town") is a body politic and corporate, organized and existing under the laws of the Commonwealth of Massachusetts.
3. Defendant Maura Healey (the "Attorney General") is the Attorney General of the Commonwealth of Massachusetts and is named herein in her capacity as representative of the public interest in the administration of charitable trusts, pursuant to G.L. c.12, § 8G.

Background

The Trust by Warren Gould Roby

4. Article 5 of the Last Will and Testament of Warren Gould Roby (the "Roby Will") contained the following provision: "I give to the Town of Wayland, Massachusetts, one-half acre of my land on the east side of Concord Road and opposite the short road connecting the Sudbury Concord roads in the Town of Wayland, the same to be not nearer to my house than two hundred and twenty-five feet and the metes and bounds of which shall be fixed by my executors and a plan thereof recorded in the Middlesex South Registry of Deeds. And to erect a building thereon for use as a public library, as near fireproof as possible, I give to the Town of Wayland the sum of twenty-eight thousand dollars." A copy of the Roby Will is attached hereto as Exhibit A.
5. On or about September 4, 1899, by Deed from Cynthia C. Roby, widow of Warren Gould Roby, recorded with the Middlesex South District Registry of Deeds in Book 141, Page 2764 (the "Roby Deed"), the Town acquired a parcel of land consisting of one-half acre (the "Roby Parcel"). A copy of the Roby Deed is attached hereto as Exhibit B and a copy of the plan recited therein is attached hereto as Exhibit C.
6. The Town accepted the gift of land and sum of money under the Roby Will "to be devoted to the erection of a building thereon to be used as a Public Library" by vote of the Town Meeting under Article 25 at the 1898 Annual Town Meeting. A certified copy of said vote is attached hereto as Exhibit D.

The Present Library Site at 5 Concord Road

7. The Library was opened for general use in November, 1900, at a cost of just under \$29,000.00, using funds bequeathed by Warren Gould Roby and constructed on the Roby Parcel. At that time, the Town's population was just over 2,000.

**Comment [CMM1]:** Do we know the size of the original parcel?

8. At the March 5, 1923 Annual Town Meeting, under Article 10, the Town voted to accept a gift of about 16,000 SF of land abutting the Roby Parcel on the north and east to enlarge the lot and to protect the property. A certified copy of the vote of the 1923 Town Meeting is attached hereto as Ex. E.
9. On March 20, 1923, the Town acquired two lots abutting the Roby Parcel from Amos I. Hadley and Alfred W. Cutting. No purpose for the conveyance is stated in the deed. A copy of the Hadley/Cutting Deed is attached hereto as Ex. F.
10. Under Article 11 of the March 9, 1955 Annual Town Meeting, the Town voted to accept the gift of a lot of land from Mary A. Clifford. A certified copy of the vote of the 1955 Town Meeting is attached hereto as Ex. G.
11. On February 7, 1955, the Town acquired a lot of land containing approximately 7,380 SF abutting the Library site from Mary A. Clifford. No purpose for the conveyance of the land is cited in the deed, but the deed references a plan of land "to be acquired by the Wayland Public Library." A copy of the Clifford Deed is attached hereto as Ex. H.
12. In June 1987-1988, a new wing was added to the library, such that the Library was enlarged to 14,000 gross square feet.
13. With the various acquisitions of parcels noted above, the current Library site consists of 1.02 acres, which includes the Roby Parcel. Of the various parcels comprising the current Library site, only the Roby Parcel is subject to a public charitable trust. See Town of Wayland Assessors' property record for 5 Concord Road attached as Ex. I.
14. Currently, the Library offers 8,527 SF of usable space for patrons, consisting of a finished basement, a first floor and a finished upper level or mezzanine. See Town of Wayland Assessors' property record for 5 Concord Road attached as Ex. I.
15. The Library is open 3,273 hours per year and serves 116,653 patrons per year. Its total holdings consist of: 67,622 books; 8,530 audio cassettes and compact discs; 10,605 video cassettes/discs/DVDs; and 110 print periodicals, newspapers and other print serials. Its total circulation activity is 264,847 items per year. The Library provides 47 dedicated parking spaces and seating capacity for 82 patrons. The Library has no individual or group study rooms but does have one meeting room that can accommodate up to 60 people, which was used 509 times in the prior year. See excerpt from Town's application

Comment [CMM2]: Was the new wing located on any portion of the Roby Parcel? Or was it located on the other lots? What was the purpose of this wing?

Comment [CMM3]: This is the figure used in the library grant application, but it appears at odds with the Assessors' records, unless part of the addition is not usable space.

Comment [CMM4]: Patrons only or patrons plus employees?

to the Commonwealth of Massachusetts Board of Library Commissioners application, attached as Ex. J at pages 7-8.

16. In April 2001, the Library Trustees formed a Library Planning Committee of Trustees to assess the Town's vision for future library needs. Community-wide surveys and focus groups were conducted, resulting in the report of the Library Planning Committee released in April 2002. To meet these future library services and facilities, the Library Trustees requested, and Town Meeting approved, an appropriation of \$40,000.00 to hire a consultant to perform a feasibility study of the existing Library site and to determine how the existing site could be renovated and expanded to meet the Town's future library needs. In May 2004, the architectural firm of Lerner, Ladds + Bartels, Inc. was selected to conduct the feasibility study, and a year later, their final report was issued and offered three design alternatives, each using the existing site. A copy of Lerner, Ladds + Bartels, Inc.'s Feasibility Study and Architectural Planning report dated April 2005 is attached hereto as Ex. \_\_\_\_\_.

17. Need to insert relevant excerpts from feasibility study as to inadequacies of current library

18. Need a sentence or two here to transition from the feasibility study for the existing site to the new library grant application explaining why existing site alternatives did not work or were rejected. Ultimately, further expansion of the existing Library site was deemed (by whom?) inadvisable, in part due to the adoption of the Town's Aquifer Protection Bylaw (elaborate on impact of bylaw on expansion – setbacks? Lot area? Parking?).

#### The Proposed New Library

19. On January 19, 2017, the Town submitted an application for library construction funds to the Commonwealth of Massachusetts Board of Library Commissioners (the "Application") and in Section \_\_\_\_ of the Application, described the deficiencies of the current Library. A copy of Section \_\_\_\_ of the Application is attached hereto as Exhibit J.
20. Specifically, the Application highlights the numerous deficiencies of the existing Library, including:

Comment [CMM5]: Assess value in attaching report v relying on grant application

- a. Insufficient space to meet or exceed basic levels for print volumes, periodicals and public use internet computers (See Ex. J at p. 10);
  - b. Inadequate seating for patrons for leisure reading, story time, quiet study, research and collaborative work (See Ex. J at p. 10);
  - c. Insert additional relevant references from grant application
21. The proposed site for the new library is 195 Main Street in Wayland, consisting of 2.3 acres, and the proposed library building will consist of 33,530 gross square feet. See Ex. J at page 8.
22. The proposed new library will be a two-story modern facility with flexible, light-filled spaces and dedicated areas for children and teens, browsing, private study, small group meetings, community programs, as well as larger spaces for collections, technology, and customer service. See Ex. J at p. 8.
23. The proposed new library will offer the following amenities:
- a. Improved access to the physical collection of books and media (See Ex. J at p. 17);
  - b. Providing a variety of community gathering spaces for different sized events (See Ex. J at p. 17);
  - c. Improving quantity and quality of programming for educational and cultural events and presentations (See Ex. J at p. 17);
  - d. Insert additional relevant references from grant application

Count I - Cy Pres

24. Plaintiff realleges paragraphs 1 through \_\_\_\_\_, and incorporates them herein.
25. The Roby Will manifests a general charitable intent to support a public library within the Town for the benefit of the public generally.

26. It has become impossible or impracticable to continue to use the Roby Parcel for the Town's primary or sole public library because the Roby Parcel and the other unrestricted parcels that comprise the Library site at 5 Concord Road lack sufficient space for an expanded library to serve the Town's current and future needs.

27. It has become impossible or impracticable to continue to use the Roby Parcel for the Town's primary or sole public library because the use of the Roby Parcel and the other unrestricted parcels that comprise the Library site at 5 Concord Road for public library purposes cause hazardous crowding conditions and other health and safety issues; the Library on the Roby Parcel cannot meet the Americans with Disabilities Act requirements; the Library on the Roby Parcel lacks adequate space for programs necessary to serve, in particular, children, young adults and seniors; and expansion of the existing Library to meet the Town's needs is not possible or practical, given the limited land area of the site, its location within the Aquifer Protection Zoning District and constraints that current zoning requirements place on providing sufficient parking commensurate with an expanded library.

28. The general intent of the Roby Will to offer land and money to build a public library would be more closely served by providing broader, upgraded library services to all of the Town's age groups in a new, fully accessible building, than to require the continued use of an obsolete building for limited library services to a limited segment of the community.

29. The general intent of the Roby Will to provide land and funds for the construction of a public library will continue to be served by using the existing Library building on the Roby Parcel for services and programs related to a modern library, i.e., a cultural center, featuring visual arts, music performances, studio use, and exhibits on the history of Wayland and Sudbury River, as well as an art and technology/innovation center.

30. The Attorney General has assented to the granting of the relief requested by this Complaint. (The original, executed Assent of the Attorney General is attached hereto as Exhibit K)

Comment [CMM6]: Confirm

Count II – DEVIATION

31. The plaintiff realleges paragraphs 1 through \_\_\_\_\_, and incorporates them herein.

Comment [CMM7]: To be attached when obtained at a later date.

32. Through the Roby Will and Deed, a public charitable trust was created whose object was to provide land and funds for the construction of a public library.
33. The Town constructed and operated for the entirety of its useful life a public library on the Roby Parcel, thereby accomplishing the object and purpose of the trust.
34. Owing to circumstances not known or anticipated at the time of the bequest, namely that the Town's population would grow to current levels and the definition of and services expected from a library would expand over the past 117 years such that the needs of the community can no longer be served by the current Library and certainly cannot be served by just the portion of the Library building located on the Roby Parcel.
35. Other than requiring that the land and funds be used for the construction of a public library, Warren Gould Roby's Will contained no express limitation on the nature and scope of library services to be offered; the Roby Will did not require that his gift be used solely to house circulation stacks or a reading room. There is no language contained in the Roby Will to suggest that the use of the building on the Roby Parcel for a cultural center, featuring visual arts, music performances, studio use, and exhibits on the history of Wayland and Sudbury River, as well as an art and technology/innovation center – programs and uses commonly associated with a modern library - would not serve the public library interest in accordance with Mr. Roby's wishes.
36. Narrowly construing the definition of a library and requiring the Town to continue to use the Roby Parcel as a full-service library would likely defeat or substantially impair the purpose for which the trust was created, in that the current Library site, including the Roby Parcel and the other unrestricted parcels, can no longer serve the library needs of the community.
37. The Attorney General has assented to the granting of the relief requested by this Verified Complaint. (The original, executed Assent of the Attorney General is attached hereto as Exhibit (K))

Comment [CMMB]: To be attached when obtained at a later date

WHEREFORE, the Plaintiff, Town of WAYLAND, respectfully requests that this Court enter judgment:

1. Finding that the Roby Will created a charitable trust;

2. Finding that the Roby Will had a general charitable intent to support a public library within the Town for the benefit of the public generally;
3. Finding that it is no longer practicable to use the Roby Parcel as a full-service public library for the Town;
4. Finding that the use of the Roby Parcel for a cultural center, featuring visual arts, music performances, studio use, and exhibits on the history of Wayland and Sudbury River, as well as an art and technology/innovation center is a modern extension of a public library and consistent with the intention expressed in the Roby Will, or alternatively, finding that the use of the Roby Parcel for programs associated with and overseen by the Town of Wayland Library Board of Trustees as a cultural center, featuring visual arts, music performances, studio use, and exhibits on the history of Wayland and Sudbury River, as well as an art and technology/innovation center is a modest but logical deviation from the charitable intent as expressed in the Roby Will that is consistent with and better promotes said charitable intent, for it will provide expanded public library services to greater numbers of the Town's residents in a safe, accessible facility;
5. Ordering that said charitable trust be administered cy pres and allowing the Town to use the Roby Parcel for programs associated with and overseen by the Library Trustees and not limiting the use of the Roby Parcel to historical library uses in the form of Order attached hereto as Exhibit 11;
6. Grant such other and further relief as this Court deems just and equitable.

Comment [CMM9]: To be attached at later date



TOWN OF WAYLAND

By its attorneys,

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