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When Your Cranberry Bog Sale Goes Sideways: Lessons from a Lawyer who's Spent Some Time in Waders

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After years of advising cranberry bog owners, as well as serving as trustee for an 800-acre cranberry farm for eight years, the Supreme Judicial Court's recent decision in [Watermark LLC v. R H Benea Cranberry Co., Inc.](#) is one every grower in Massachusetts needs to understand. It's a cautionary tale about what happens when a buyer gets clever with Chapter 61A – and loses.

What Happened

R H Benea Cranberry Co. owned a roughly twenty-five acre cranberry bog in Duxbury that was assessed and taxed as agricultural land under G. L. c. 61A § 23. Benea found a buyer – Watermark LLC – and the two struck a deal at \$462,500. Every farmer should know the drill...you're selling your land and the buyer plans to take it out of agricultural use, you have to notify the town, and the town gets a right of first refusal. That's the trade-off for the favorable tax treatment for Chapter land ([see our previous blog on that subject here](#)). Many farmers prefer to sell to buyers who will continue operations for the future and incorporate into their own operations. As counsel, we have them sign an affidavit that they will continue to grow.

Unfortunately, Watermark – in writing– indicated that they did “not plan to keep [the property] in 61A” and intended “to subdivide off [two] 40,000 square-foot lot[s] plus or minus and keep the rest agricultural”. With Watermark's assent, that language went straight into the notice of intent to sell that Benea sent to the town.

About a month later, when Watermark caught wind that the town might actually exercise its option, they suddenly had a change of heart. They sent an affidavit saying they had no current intention to change the property's use. Then Watermark and Benea jointly tried to “withdraw” the notice of intent.

The town exercised its option to purchase through the Duxbury affordable housing trust and Watermark sued, seeking to force Benea to sell to them and to have the town's exercise of its option declared void. The Superior Court ruled against Watermark on



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summary judgment, and the SJC affirmed on every point.

The Four Arguments Watermark Made — and Lost

1. The notice didn't specify a residential, industrial, or commercial use.

Watermark argued that because the notice didn't label the intended use of the two subdivided lots as specifically "residential," "industrial," or "commercial," it was legally insufficient. The SJC rejected this, holding that the notice need only reasonably disclose an intended nonagricultural use — it doesn't have to fit neatly into one of those three statutory boxes. Saying you plan to "subdivide" lots while keeping "the rest" agricultural plainly signals a non-61A use for those lots.

2. My intent was disputed — you can't grant summary judgment.

Watermark pointed to later statements that it had always intended agricultural use and argued this created a genuine factual dispute. The Court acknowledged the conflicting evidence but held it was immaterial. What matters is the intent expressed in the notice of intent at the time the town received it — not what the buyer claims to have been thinking weeks later. Once the town gets a valid notice, its option vests.

3. We withdrew the notice, so the town's option evaporated.

This was perhaps the boldest argument. The SJC pointed out that while the Legislature did create a withdrawal mechanism for notices of intent to *convert* land, it conspicuously did not do the same for notices of intent to *sell*. The Court held that a municipality's option becomes irrevocable the moment it receives a valid notice of intent to sell.

4. The town can only buy the two lots, not the whole parcel.

Watermark tried to limit the town's option to just the two 40,000-square-foot lots slated for subdivision, relying on G. L. c. 61A, Section 17 and 14. The Court shut this down too. Section 17 deals with roll-back taxes, not the right of first refusal. And under Section 14, the town's option must match the terms of the purchase and sale agreement — which covered the entire twenty-five acres at the agreed price.

What This Means for Growers

If you're a cranberry grower — or any farmer operating under Chapter 61A — here's what you need to take away from this case:

Be careful who you sell to, and what they say. The buyer's stated intent gets baked into the notice of intent. Once that notice hits the town's mailbox, the clock starts ticking and the town's option locks in. Your buyer's later "change of heart" won't undo it. A casual email also carried weight here.

You cannot withdraw a notice of intent to sell. Unlike a notice of intent to *convert*, there is no statutory take-back for a notice to sell. The SJC has now made this crystal clear.

The town's option covers the whole deal. You can't carve out just the portion of land intended for non-agricultural use. The town steps into the buyer's shoes on the same terms as the purchase and sale agreement.

Final Thoughts

Chapter 61A is a powerful tool for keeping our agricultural land in production, but it comes with strings. This case is a reminder that those strings are real, and the courts will enforce them. A seller can follow the Chapter guidelines of withdrawing from Chapter and paying full taxes for one year to extinguish the right of first refusal or do the same for two full years in order to eliminate the rollback taxes also which makes the sale more attractive to a non-grower buyer.

If you're thinking about selling your bog, call your lawyer *before* you shake hands with a buyer. And make sure your buyer understands what Chapter 61A requires — because once that notice goes out, there's no turning back.

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