

Scan of Carl Sheridan's letter to Mr. H.R. McCarthy about a mortgage for FPS. 1963

From the letter:

The Town of Sudbury evolved from the original authorization of the Colonial Court in 1638 upon the petition of a Peter Noyes and three others to order the Town. The Town and Church were inseperable. All Church and Town matters were acted upon in the Town Meetings. In Fact the Church was called the Meeting House.

In 1725 the First Parish Meeting House was completed on the Northwesterly corner of the present land.

In 1836 there was a separation of the Town and the Church in that the meetings of the Town began to be held separately from the meetings of the Church and the Church began t keep separate records. There is an old plan of the Sudbury Meeting House Lot by August Tower, dated December 10, 1894, not recorded, which shows he Meeting House, school house and the powder house on the present land. This plan also shows the triangular piece separated by Concord Road which is now known as the "Common". It is my understanding that this common was leased to the Town for a period of 99 years at an annual fee of \$1.

(... discussion of more building details and FPS v. Jones ...)

However, there is no record that we have been able to find where the First Parish of Sudbury obtained title to the property that has been used as church property.

There has been no separation of the title to this property according to the records we have been able to check.

2010.11.07 jch - from *First Parish in Sudbury v. Jones, 1851* – court case – why we own common:

****2** In 1723, the proprietors of common lands in Sudbury granted the land on which the meetinghouse stands, and the common about it, not including the *locus in quo*, "to the west precinct in Sudbury," "for the conveniency of said west precinct's meetinghouse, and for a burying place." The east and west precincts in Sudbury corresponded with the present towns of Wayland and Sudbury. The east precinct was in 1780 erected into the town of East Sudbury, (afterwards changed in name to Wayland,) leaving the west precinct the present town of Sudbury. The terms, east and west precinct, were used previous to such separation, to distinguish the different portions of the original town, as different parishes of the same town, and also for all other purposes, as well municipal as parochial.

Grants were made by the proprietors of common lands in Sudbury for the support of the ministry in the west parish, out of which a fund has arisen, which has since come into the possession of the plaintiffs.

The *locus in quo* was included in a grant from the proprietors of common land to Richard Biddlecom in 1722. And said proprietors in 1740 exchanged with John Haynes "some part of the land laid out for a training field," &c.; in consideration of which Haynes conveyed "unto the inhabitants of the westerly precinct in said Sudbury forever, all his right, title and interest in and unto about half an acre of land laid out to the right of Richard Biddlecom, within the common and undivided land in said Sudbury, and on the westerly side of Sudbury River, and is the land whereon the school-house now stands?"

CARL A. SHERIDAN
WILLIAM I. RANDALL
ROBERT T. NEALON
ARTHUR M. MASON
JOHN P. GARRAHAN
JOSEPH L. McQUADE
DAVID T. RICH

SHERIDAN AND RANDALL
ATTORNEYS AT LAW
129 CONCORD STREET
FRAMINGHAM, MASSACHUSETTS 01701

TELEPHONE 872-1266
AREA CODE 617

IN REPLY PLEASE REFER TO FILE

No. 2988

December 23, 1963

Mr. H. R. McCarthy
Nobscot Road
Sudbury, Massachusetts

Re: First Parish of Sudbury

Dear Mr. McCarthy:

Mr. Robert A. Bareiss phoned me and asked me to send you the information in regard to our title examination of the property occupied by the First Parish of Sudbury. In accordance herewith I am sending you copies of plans, deeds, and also a copy of my report regarding the title of this property.

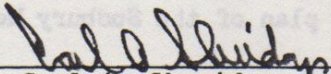
In checking into the title of this property, we have made a search of the records in the Registry of Deeds in Cambridge, the County Commissioner's Office, the Library at the State House and also have gone through the records of the First Parish of Sudbury from 1836 to 1956. The difficulty as set forth in my opinion is the fact that we have been unable to find any instrument wherein the Town of Sudbury has released its interest in this property. There have also been some cases that have gone to our Supreme Court, involving certain rights in connection with the groups of the First Parish of Sudbury, but again there is nothing according to our opinion which definitely states that the Town of Sudbury has released its prior interests in this land.

In my opinion I attempted to cover this matter completely, but in the event that you have any further questions, please feel free to call upon me.

Very Truly yours,

SHERIDAN AND RANDALL

By


Carl A. Sheridan

CAS/cob
Enclosures

September 23, 1963

2988

Mr. Robert A. Bareiss
First Parish of Sudbury
141 Goodman Hill Road
Sudbury, Massachusetts

Re: Mortgage Framingham Trust Company to First Parish of Sudbury

Dear Mr. Bareiss:

In accordance with our agreement at your recent conference at this office, we have made a search of municipal, state and court records to determine the title ownership of the land and buildings in the possession of your Church.

First, let me say that the records show that First Parish of Sudbury is an unincorporated religious organization. Such an organization is recognized under Chapter 68 of the General Laws and can hold property under the terms of said chapter as though incorporated.

An analysis of many records discloses the following:

The Town of Sudbury evolved from an original authorization of the Colonial Court in 1638 upon the petition of a Peter Noyes and three others to order the Town. The Town and Church were inseparable. All Church and Town matters were acted upon in the Town Meetings. In fact, the Church was called the Meeting House.

In 1725 the First Parish Meeting House was completed on the Northwesterly corner of the present land.

In 1795 the present First Parish Church, as it stands today, was erected on the present site. History notes that the Town voted for the erection of this new meeting house on the common land near the present meeting house and that the South and West cells of said house should occupy the South and West cells of the old meeting house as it stood and that the enlargement of the Meeting House should extend North and East.

In 1836 there was a separation of the Town and the Church in that the meetings of the Town began to be held separately from the meetings of the Church and the Church began to keep separate records. There is an old plan of the Sudbury Meeting House Lot by Augustus Tower,

September 23, 1963

dated December 10, 1894, not recorded, which shows the Meeting House, school house and the powder house on the present land. This plan also shows the triangular piece separated by Concord Road which is now known as the "Common". It is my understanding that this Common was leased to the Town of Sudbury for a period of 99 years at an annual fee of \$1.00.

There is a plot plan drawn by Mr. George White, the Town Engineer, for the First Parish Church in 1960. This plan does not agree with the 1894 plan in that the total distances do not coincide by a physical examination of the ground and an entry in the church records indicates that a driveway leading to the Goodnow house on the Westerly boundary of the Church has cut into the amount of land as shown on the Tower Plan.

It is my opinion that the boundaries of the First Parish land, for the purposes of making a plan acceptable for recording, are ascertainable. The church land is bounded on the North by a Town Cemetery divided from the church land by a retaining wall; it is bounded on the East by a driveway leading to the cemetery and Concord Road; it is divided on the South by Hudson Road; it is bounded on the West by the Goodnow property.

Through the years, by official action of the Town in many instances, and a decision of the Supreme Court of Massachusetts in the case of Inhabitants of First Parish in Sudbury vs. Stearns in 38 Massachusetts Reports, page 148, the First Parish of Sudbury has been recognized as a separate entity.

However, there is no record that we have been able to find where the First Parish of Sudbury obtained title to the property that has been and is now used as church property.

There has been no separation of the title to this property according to the records we have been able to check.

It is my opinion that a petition in the Land Court to clear this title or a petition to the Legislature for this purpose would require the authority of the Town of Sudbury at a town meeting.

It is my opinion that the Town of Sudbury could not take over ownership of this property because they would be stopped because of the history and prior acts.

Until one of the above determinations is made, the title is indefinite. We could not certify the title to the mortgagee.

The immediate problem is to enable the First Parish of Sudbury to obtain a mortgage and to start construction of the church addition.

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Until the title is cleared, the only possibility would be a mortgage and note signed by the membership to guarantee payment. The church property would be taken as security and the members would individually guarantee payment.

To me, the practical way to clear up this title would be to call a Special Town Meeting and have the Inhabitants of the Town of Sudbury grant all the right, title and interest in and to this property to the First Parish of Sudbury. In doing this, the contracts regarding the carriage sheds, the clock, the triangular common and the veterans monument could be resolved and clarified.

This has been an interesting case. There are many records to substantiate the summary set forth in this opinion.

Thank you for your consideration of this office and if I can be of further assistance please let me know.

I am enclosing suggested notice of meeting and votes for your consideration.

Very truly yours,
Sheridan and Randall

By _____
Carl A. Sheridan

jd
enclosures

cc to: Framingham Trust Company
79 Concord Street
Framingham, Massachusetts