



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
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January 3, 2023

Senator Fattman and Representative Murray:

I write in response to your letter of November 25th pertaining to an Article 97 question in the town of Hopedale. The Executive Office of Energy and Environmental Affairs (EEA) recommends that the Town of Hopedale and the delegation pursue legislation to address Article 97.

The available records do not definitively indicate whether Article 97 applies to the property in question. Available records suggest that Article 97 does apply, but these records do not conclusively resolve the issue. We believe that further research is unlikely to produce additional evidence that would conclusively resolve this matter. As a result, the application of Article 97 to this property is likely to remain uncertain absent legislation or litigation. In such cases, as here, EEA routinely recommends legislation, which provides certainty and avoids future clouds on title without the time and expense of litigation.

A Town vote to pursue Article 97 legislation followed by approval of a bill authorizing disposition of the land in question by a two-thirds roll call vote of the legislature would eliminate the need to determine whether the land is subject to Article 97. The Town took this approach in 1985, when it voted to pursue Article 97 legislation, but no such legislation was ultimately enacted. Revisiting this approach today will resolve the matter. If the Town, Legislature, and Governor believe that a public purpose is advanced, alternatives to the disposition are properly considered, and adequate mitigation is provided, their approval of a bill and its passage into law will allow the proposed subdivision to proceed.

The EEA team stands ready to work with the Town of Hopedale and delegation to shape legislation pursuant to the recently passed Act Preserving Open Space in the Commonwealth (Chapter 274 of the Acts of 2022).

Sincerely,

A handwritten signature in cursive script, appearing to read "Kurt Gaertner".

Kurt Gaertner, Assistant Secretary

Cc: Jeff Nutting, Town Administrator
Glenda Hazard, Select Board Chair