



TOWN OF HOPEDALE

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**Park
Commission**
Michael Reynolds
Michael Ledone
Chairman David
Sprowl

Hopedale Park Commission September 16, 2021 Meeting Agenda 7:00 pm Remote Meeting via Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/81329110405?pwd=bnRRRjlsOHcvNXp5VS9qSjV1aVpqZz09>

Call to Order

Attendance

Approval of Minutes: August 19, 2021

RECEIVED

By Lisa M. Pedrolis at 9:05 am, Sep 10, 2021

Announcements, correspondences and requests

- Park usage request from HS Class of 2024 to hold a corn hole tournament fundraiser on Saturday, October 2nd (rain date Sunday, October 3rd).
- Request from Colleen Strapponi to review Article 97 Smith vs Westfield 478 Mass 49, a precedent setting case for protecting the Parklands (Article attached on page 2 of agenda)

Public Comment - Short Items (non-discussion)

Review previous action items

- Jeff Leclair, from Fin and Feather, to review the summer program
- Update, if any, from Anna Graham from Picnic Pastimes regarding her request to use the Park (pending BOH approval as well)
- Review suggestions from Hopedale for Change members regarding diversity in Hopedale Parks
- Revised quote for Pathway to ADA Swing
- Review additional quotes for Town Park stone wall repairs
- Park Usage Fees
- Update on cost and availability of Go Go Goats to assist with the growth along the east side of the pond near the Little Red Shop
- Finalize request to install a sign near the Bath House for the Blackstone River Valley Historical Park

New Business

Bills and Invoices

Public Comment - lengthy items

Report of board members

- Update on previous Open Space and Master Planning Committee meetings

Other topics not anticipated in the last 48 hours

On June 16, 2021, Governor Baker signed into law An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency. This Act includes an extension, until April 1, 2022, of the remote meeting provisions of his March 12, 2020, Executive Order Suspending Certain Provisions of the Open Meeting Law. Section (1) of the executive order allowing public access through adequate, alternative means is independent from Section (2), which allows members of the public body to participate remotely. The public body may conduct its proceedings under the relief provided in section (1) or (2) or both.

The Evolving Interpretation of Article 97

Smith v. Westfield, 478 Mass 49 (2017)

In Smith v. Westfield, 478 Mass. 49 (2017), the Supreme Judicial Court considered whether Article 97 of the Amendments to the Massachusetts Constitution applied to a parcel of land originally acquired by the city through a tax taking. The Court held that the property was subject to Article 97 because the city, through its actions, clearly expressed its intent to protect the property permanently. This decision expands the Court's previous decision in Mahajan v. Department of Environmental Protection, 464 Mass 604, 615 (2013), and allows municipalities more opportunity to permanently protect land for Article 97 purposes.

By way of background, Article 97, by its express terms, applies to land "taken or acquired" for "conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources". Once land is acquired for an Article 97 purpose, it is permanently protected for that particular purpose unless the General Court votes by a 2/3 vote of each house to remove such protection. In addition to the seminal opinion of the Attorney General on this topic, the Supreme Judicial Court has rendered two important opinions interpreting Article 97. In the first, Hanson v. Lindsay, 444 Mass. 502 (2005), the seminal fact was that town meeting had voted to authorize the conservation commission "to accept for conservation purposes a deed" to property that the town originally acquired through a tax foreclosure (emphasis added). The Court held that such land was not protected by Article 97 where the property was not acquired for an Article 97 purpose and no deed restriction had been recorded in connection with the referenced town meeting vote. In Mahajan, the Court interpreted Article 97 more broadly, holding that Article 97 applies to land not originally acquired or taken for an Article 97 purpose provided that such land was later specifically "designated" for an Article 97 purpose.

The question left undecided in Mahajan, whether Article 97 applies to land that was not acquired for an Article 97 purpose and that was not subject to a recorded restriction, was answered in Westfield. In Westfield, the property at issue, originally acquired by tax taking in 1939, became known as the Cross Street Playground, with two baseball fields and a playground located thereon, and was used by the public for over 60 years in that capacity. The city council placed the property in the custody of the playground commission, passed an ordinance formally recognizing it as a playground, and included the property in its open space plan recognizing it as public land with a "full" degree of protection and "active" recreation potential. Importantly, in 1979, the city received a grant under the federal Land and Water Conservation Fund Act of 1965 (the "Act") to rehabilitate the playground, and signed a contract agreeing to comply with the Act. The purpose of the Act was to assure "outdoor recreation resources" for all persons, and, importantly, mandated that "[n]o property acquired or developed with assistance [under the Act] shall . . . be converted to other than public outdoor recreation uses" without the approval of the United States Secretary of the Interior.

In 2011, the city council transferred the property to the school department for the construction of an elementary school. A group of residents sought to enjoin the construction, claiming the property was protected by Article 97, and therefore that the city was required to obtain approval of the General Court to change the use of the property. The Superior and Appellate Courts held that Article 97 did not apply because the property was not acquired for an Article 97 purpose and was never subject to a recorded restriction. However, the Appeals Court, in its concurrence, urged the Supreme Judicial Court to reconsider the Hanson decision because the plain language of Article 97 does not require a recorded restriction. Based upon the facts outlined above, the Westfield court concluded that Article 97 applies to the Cross Street Playground because the city's actions exhibited a clear intent to dedicate the land for park and playground purposes in perpetuity. The Court held that the "totality of the circumstances" must be analyzed to determine if the city intended to dedicate the land permanently as a public park and where the public accepts such use by actually using the land as a public park. To the Court, "the determinative factor", or the clearest expression of the city's intent, was the city's acceptance of the provisions of the Act, by which it forfeited its ability to use the property for any use other than outdoor public recreation permanently without the consent of the federal government. The Court held that Article 97 applies to land not originally acquired for an Article purpose where the municipality demonstrates a "clear and unequivocal intent to dedicate the land permanently as a public park and where the public accepts such use by actually using the land as a public park". (Emphasis added).

If you have any further questions concerning the Westfield case, or Article 97 generally, please contact Attorneys Shirin Everett (severett@k-plaw.com) or Katharine L. Klein (kklein@k-plaw.com,) at 617-556-0007.