

The Office of Town Counsel

Memorandum

To: Kara Brewton

From: Joslin Murphy

Re: Potential Ninth School Sites

Date: January 21, 2016

Cc: Neil Wishinsky
Susan Wolf-Ditkoff
Mel Kleckner
Joe Connolly
Alison Steinfeld

This responds to your inquiry concerning restrictions on the use of the following Town owned sites¹ for the purposes of constructing a public elementary school.

I. ARTICLE 97

Article 97 of the Articles of Amendment to the Massachusetts Constitution (“Article 97”) provides, in relevant part, that “the people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment.” Under Article 97, public lands that are acquired for these purposes cannot be used “for other purposes or otherwise disposed of” without a two thirds vote “of each branch of the general court.”

In addition, the Executive Office of Energy and Environmental Affairs Article 97 Land Disposition Policy is intended to ensure that there is “no net loss” of Article 97 lands. Under this Policy, municipalities seeking to dispose of Article 97 land (or convert the use of such land to another purpose) must first (1) explore all other options and find that “no feasible and substantially equivalent alternatives exist; (2) obtain a unanimous vote of the Conservation Commission that the land is “surplus to municipal, conservation, and open space needs; (3) obtain a two-thirds vote of Town Meeting supporting the disposition; and (4) comply with all requirements of the Urban Self-Help and Land and Water Conservation Fund and other applicable funding sources, including land replacement. Failure to comply with the Policy renders the non-compliant municipality ineligible to receive EEA or EEA agency grants. Finally, G.L. c. 40, s. 15 separately requires a two-thirds vote of Town Meeting in order to “transfer the care, custody, management and control” of land that was acquired for playground and certain other purposes to another specific municipal purpose.

¹ Grateful thanks to ATC Jonathan Simpson for his historical research and contribution to this matter.

II. TOWN OWNED SITES UNDER REVIEW

The following Town-owned sites have been identified for potential use as the site of a public elementary school:

Putterham Meadows Golf Course

The Putterham Meadows Golf Course² is comprised of several parcels of land that were acquired by the Town between 1899 and 1939. See, Exhibit A, attached. In 1899, the western third of the golf course (“lot 1”) was acquired by the Town’s Park Commissioners from funds expressly designated for playground and/or recreational purposes by Town Meeting. Lots 2 – 9, including the middle-south portion along West Roxbury Parkway, the northwest corner, and a large portion of the southeast corner were acquired by the Town’s Park Commissioners “with a view of forming a connected area for purposes of public recreation and playgrounds...” The remaining lots, numbered 10 – 13, were acquired by the Town’s Park Commissioners for playground purposes (lot 10); to improve the boundary lines between the golf course and the contiguous golf course owned by The Country Club (lot 12a and 12e), and for “a peat pit and turf nursery” presumably to service the gold course (lot 13). The Golf Course is considered to be Article 97 land.

Soule Playground/Baldwin School

The Soule Playground was acquired by the Town in 1959 “for recreational purposes” under a so-called “friendly” taking under the power of eminent domain. Thereafter, an Urban Self-Help Grant was accepted by the Town in FY97 for improvements to the Playground. Soule Playground is considered to be Article 97 land.

The Baldwin School Property is comprised of two parcels of land that were acquired by the Town in 1873 and 1941 for educational purposes. In FY76, the Town accepted a Federal Land and Water Conservation Fund (“LWCF”) grant for improvements to the tennis court area of this property. Aside from this portion of the property, the Baldwin School property is not considered to be Article 97 land, and therefore may be used for educational purposes with little likelihood of a successful Article 97 challenge. However, the Baldwin School is listed in the National and State Historic Registers, which would trigger historic impact review.

Dane Park

The lots comprising Dane Park were acquired by the Town in 1952 “for recreational or educational purposes.” Dane Park is not considered to be Article 97 land, and therefore may be used for educational purposes. However, because the land has historically been used by the Town as a public park, a decision to use the property for educational purposes is not immune to challenge.

² More recently named the “Bob Lynch Golf Course at Putterham Meadows”

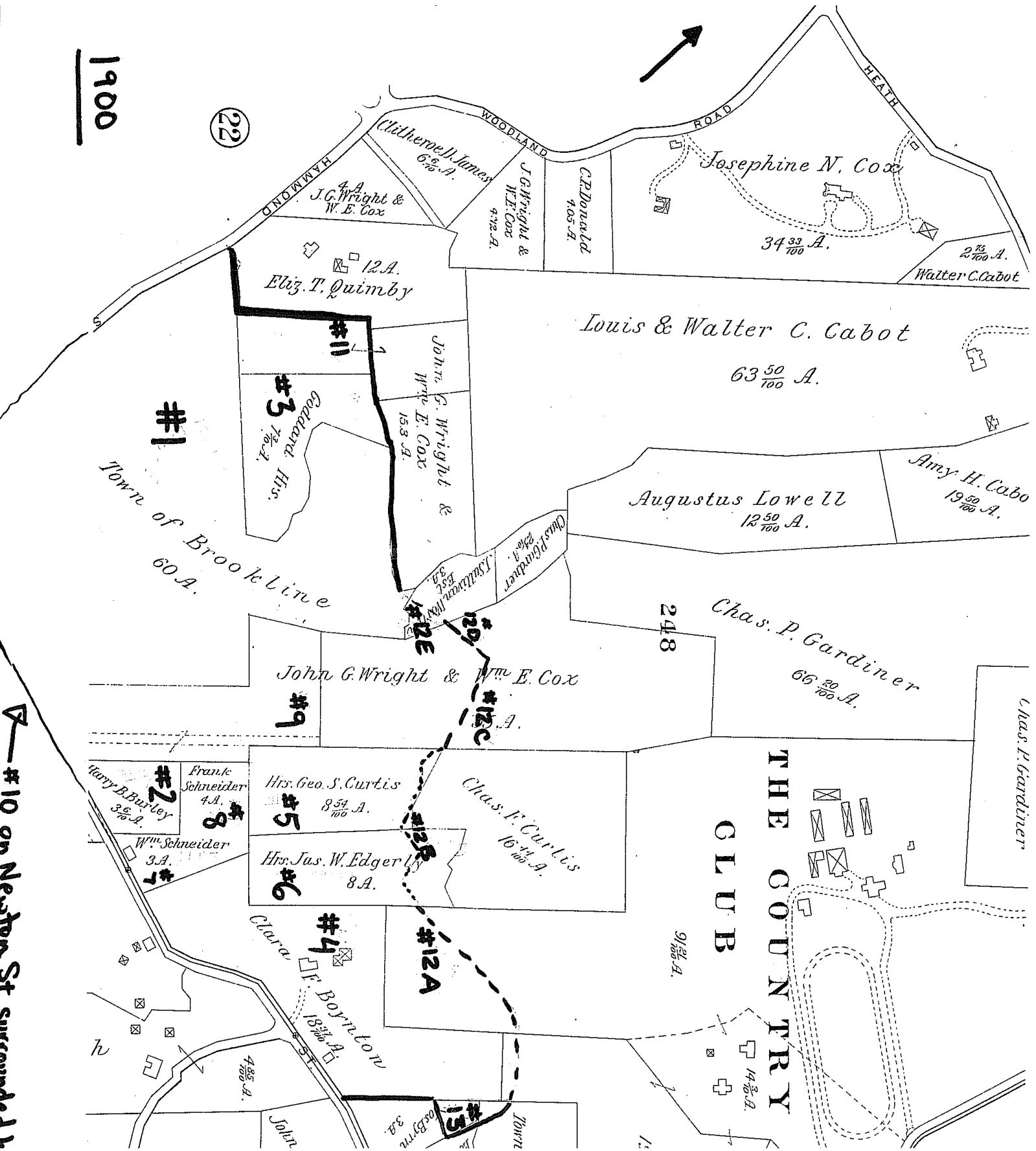
Larz Anderson Park

Larz Anderson Park was acquired by the Town in 1948 for “public recreation, charitable, or public education purposes” under the will of Isabel Anderson. Consequently, the Park is not considered to be Article 97 land. However, because the Town accepted funds for improvements to the Park under at least one federal LWCF grant that purports to protect the entire Park as open recreational land, a decision to use any portion of the property for educational purposes is highly vulnerable to challenge.

This memorandum is intended to provide you with a general impression of the Article 97 and related protections afforded these properties. If you have any further questions, please do not hesitate to contact me at (617) 730-2190.

1900

(22)



WOODLAND ROAD

HEATH ROAD

(Clitheroe) D. Jones
6 5/8 A.

J.G. Wright &
W.E. Cox
4 A.

J.G. Wright &
W.E. Cox
4 1/2 A.

C.P. Donald
4.05 A.

Josephine N. Cox

34 33/100 A.

2 75/100 A.

Walter C. Cabot

12 A.
Eliz. T. Quimby

Louis & Walter C. Cabot

63 50/100 A.

#1

#3
Goddard Hrs.
7 1/2 A.

John G. Wright &
Wm E. Cox
15.3 A.

Augustus Lowell
12 50/100 A.

Amy H. Cabot
19 50/100 A.

Town of Brookline
60 A.

Chas. P. Gardner
24 1/2 A.

24 1/2

Chas. P. Gardner
66 50/100 A.

Chas. P. Gardner

John G. Wright & Wm E. Cox

#9

#12E

#12C

Hrs. Geo. S. Curtis
8 54/100 A.

#5

Chas. F. Curtis
16 1/4 A.

Hrs. Jus. W. Edgerly
8 A.

#6

#12A

THE COUNTRY CLUB

91 25/100 A.

14 3/8 A.

Clara F. Boynton
18 3/8 A.

#4

4 85/100 A.

John

100 Byrn
3 A.

#15

#10 on Newton St. surrounded by