

McGREGOR & LEGERE

ATTORNEYS AT LAW, P.C.

15 COURT SQUARE – SUITE 500
BOSTON, MASSACHUSETTS 02108
(617) 338-6464
FAX (617) 338-0737

LUKE H. LEGERE, ESQ.
E-mail: llegere@mcgregorlaw.com
(617) 338-6464 ext. 126

VIA E-MAIL & MAIL

May 20, 2019

Melvin Kleckner, Town Administrator
Brookline Town Hall, 6th Floor
333 Washington Street
Brookline, MA 02445

**RE: Proposed Development of Ninth Elementary School
Baldwin School/Baldwin School Playground
National Park Service Correspondence**

Dear Mr. Kleckner:

Please accept this letter in response to your request to us, as Special Town Counsel to the Town of Brookline (the “Town”), to address questions that have arisen regarding an April 15, 2019 e-mail from the National Park Service (“NPS”) to me in the above-referenced matter. Specifically, we have been asked to address the import and meaning of that e-mail from NPS.¹

The NPS e-mail is not a final decision or determination, and does not raise new issues previously unknown to Town boards, officials and residents. It merely resolves questions previously posed by NPS and reiterates some “initial thoughts” of NPS on potential issues related to access for the Town to consider during the Baldwin School planning process.

We offer the following chronology for context. On October 3, 2018, we requested a determination of whether formal review and approval would be needed from NPS to allow the contemplated use of the Baldwin School Playground for recess, physical education, and similar outdoor recreational purposes by public school students of the proposed new Baldwin School.²

Over the following five months, we provided additional information in response to several requests from NPS. On December 17, 2018, Town Counsel and I participated in a conference call with NPS staff members. During that call, and in subsequent e-mail correspondence, NPS raised questions regarding whether Oak Street is a public way, and its past, present and future use for access to the Baldwin School Playground.

¹ This letter is intended to offer context for, and will focus on, what the NPS e-mail in fact represents, rather than responding to the hyperbolic arguments and allegations set forth in a May 14, 2019 memorandum from Attorney Daniel L. Goldberg, which mischaracterizes and overstates the meaning of the NPS e-mail, but also statements and actions of Brookline town officials and board members, in an apparent attempt to sow the seeds of conflict.

² This request made clear that the Town was notifying NPS of its contemplated use of the Baldwin School Playground early in the planning process, in the interest of transparency and consistent with NPS guidance documents.



McGREGOR & LEGERE

For instance, a January 30, 2019 e-mail from NPS, attached hereto for your convenience, identified these access issues and stated that NPS could “not make a definitive determination until plans are less fluid.”³ On February 5, 2019, that e-mail (and all other correspondence between this firm and NPS) was given to the Plaintiffs who have sued the Town regarding the Baldwin School, as part of discovery in that litigation.

After six months and numerous information requests, NPS staff sent the April 15, 2019 email. Our interpretation of and reactions to that e-mail are as follows.

First, this e-mail explicitly is not a final decision or determination. It unambiguously states that NPS will be “unable to provide a determination until a final plan is selected and submitted for our review.” This is consistent with what NPS had said previously.

Second, this e-mail does not raise any issues not previously identified. Rather, the e-mail: (a) resolves questions raised by NPS regarding the classification of Oak Street (“a private way owned in fee by the abutters”) and the extent of LWCF jurisdiction (“the school and the playground are two separate properties, which confirms that the LWCF boundary for Baldwin Playground is 1.5 acres”); and (b) restates the agency’s “initial thoughts” on issues regarding access to the Baldwin School Playground via Oak Street that had been raised months earlier.

Third, in our opinion these “initial thoughts” of NPS could likely be resolved through further discussion or, if necessary, tweaking the design or adding features for mitigation. NPS dismisses the existing access from the Soule Recreation parking lot on the premise that it “is not part of the LWCF boundary area and is not a permanent public access.”⁴ In fact, the Soule Recreation parking lot does provide permanent public access to the Baldwin School Playground.⁵

NPS also expresses worry that continued access to the Baldwin School Playground “under an elevated school building may lead to the perception that the site is no longer available to the public”, and that traffic using Oak Street to enter and exit the Baldwin School “would further impact the public’s ease of access to the site.” In our opinion, the new Baldwin School design would drastically improve public access to the Baldwin School Playground from Heath Street for pedestrians, cyclists and motorists alike by providing sidewalks, crosswalks, bike racks, dedicated parking spaces, and crossing guards (during school hours).⁶

³ The January 30 e-mail was sent to resolve confusion caused by a January 29, 2019 email from NPS Deputy Director P. Daniel Smith to Town Counsel requesting “the contact information for your planning office and your legal counsel” so that he could “forward that information to our staff in Boston”, despite the fact that Special Town Counsel had contacted NPS nearly four months prior and been the point of contact in multiple subsequent communications. Mr. Smith was apparently unaware of the Town’s pending request.

⁴ Oak Street is not part of the LWCF boundary area, either, yet NPS opines (without support) that the LWCF grant “was approved with Oak Street as the access for Baldwin Playground.”

⁵ In 1995, the Town applied for and received state grant money under the Urban Self-Help Program for development and renovation of the Soule site. Consequently, the Soule Recreation site is dedicated to public outdoor recreation and use for any other purposes is restricted by the Urban Self-Help Program, Article 97, and the terms of the Urban Self-Help Program Project Agreement.

⁶ Under existing conditions, Oak Street is a narrow private way which has historically been used for access and on-street parking for the Baldwin School employees and families (with “no-parking” signs on the other side of the street),



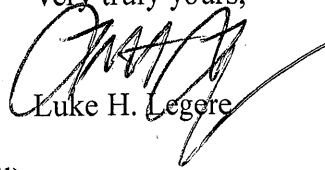
McGREGOR & LEGERE

Furthermore, it is our understanding that "initial thoughts" like those identified in the NPS e-mail could be further addressed through revisions to the school's design or other mitigation (e.g., signage to direct pedestrian traffic from Heath Street to the Baldwin Playground site). Indeed, the purpose of communicating with NPS early in the planning process was to identify issues that may be problematic, and address them.

In conclusion, the April 15 NPS e-mail is not a final decision or determination. It does not raise any issues previously unidentified by NPS or unknown to Town officials, board members, and residents. In our opinion, the "initial thoughts" raised by NPS could be resolved through a better understanding of the existing and proposed conditions, design changes, and/or mitigation.

Please do not hesitate to contact us should you have any questions.

Very truly yours,


Luke H. Legere

- cc: Brookline Select Board (via first-class mail)
- Brookline School Committee (via first-class mail)
- Joslin Ham Murphy, Brookline Town Counsel (via e-mail)

F:\data\wpdocs\2763\Ltr -- Kleckner 5.20.19.docx

and to access several private condominiums. It offers no sidewalks, crosswalks, dedicated parking, or bike racks, and no signage to alert the public that it offers access to the Baldwin School Playground.



Printed on recycled paper.

Luke Legere

From: Ferguson, Emily <emily_ferguson@nps.gov>
Sent: Wednesday, January 30, 2019 12:34 PM
To: Cryan, Melissa (EEA); jhmunphy@brooklinema.gov; Luke Legere
Cc: Megan Lang; Elisabeth Morgan; Andrew Tittler
Subject: Baldwin Park - putting the cars back on the tracks

Good Afternoon Melissa, Luke, and Joslin:

Thank you for the e-mail yesterday Melissa. We have been able to track things down internally and I thought it would be best to respond to everyone associated with this grant.

It seems that some back and forth communication was going on while we were out on furlough. It looks like Deputy Director Smith sent an e-mail to Joslin and Mr. Goldberg indicating that the Town should follow the conversion process if they are planning something that will impact Baldwin Park. We see this as our leadership supporting us to follow the process as we previously were doing. As we all know, there are still some unanswered items that need to be researched and understood through informal technical assistance before a determination of where this lands in post-completion stewardship.

We discussed those on December 17, 2018. The outstanding pieces included the following:

- confirming the size of the LWCF site - The 2015 Atlas map presents the school and playground as one parcel. The Town was going to provide parcel data to show the 1.5 acres at the bottom of Oak Street was a stand alone parcel when this grant was awarded in 1976.
- access to the LWCF site - The 1.5 acres is at the end of Oak Street, which today is considered a private street. The town believes it has always been a private street and were going to verify that for NPS. It may be helpful to know if that was the case at the time of the grant award. If it has always been private - what limitations were/are associated with that designation?
- future site access - We understand the Town is in the early planning stages but NPS will not be able to make a definitive determination until plans are less fluid. A way for the public to access the site is important to the viability of the site under LWCF.

The next e-mail that comes out will be to Joslin and Mr. Goldberg to provide clarification to him about the Deputy Director communication.

Thank you,
Emily

Emily Ferguson
State and Local Assistance Program
National Park Service
(202) 354-6931