

# PLACE

Spring 2014

Brookline GreenSpace Alliance is a non-profit membership organization dedicated to the protection and enhancement of open space in Brookline.



## Land Protection in MA: The Need for “No Net Loss” Policy to become Law



*Just because a parcel of town-owned land is a park today doesn't mean there is protection for the land to remain a park in the future. Through advocacy and legislation, however, we can build-in protections so our open space does remain open space for future generations to enjoy.*

**A**rticle 97 of the Amendments to the Massachusetts Constitution opens with a grand proposition: “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; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.”

The scope of the Article is broad, encompassing air, water, parks, wetlands, and more, according to former Attorney General Robert Quinn in his 1973 opinion.<sup>1</sup> Protected lands include parks as large and famous as Boston’s Public Garden to smaller parcels just as important to communities like Brookline’s own Linden Park. Land protected by the Article and by the MA Executive Office of Energy and Environmental Affairs land disposition policy is supposed to be protected in perpetuity, to be used only in extreme circumstances where there is a need that cannot be met by converting other land.

The problem, however, is that the land disposition policy is only that—a policy, not a statute. Increasingly, interpretations of the scope have narrowed and land dispositions have become startlingly more common and subject to little review. Legislators almost always vote in favor of land dispositions, hoping their colleagues will return the favor should they one day have a land transfer proposal before the legislature.<sup>2</sup>

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### Editor

Marian Lazar

BGSA is a non-profit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code. Donations are tax deductible.

## Balsler speaker at BGSA Annual Meeting



Arlene Mattison and Representative Ruth Balsler at the Annual Meeting

President Arlene Mattison opened the meeting in the Bakken Living-room at Wheelock College. She gave a brief update on progress at Fisher Hill Reservoir Park. Work began this past January; construction is expected to be complete in 2016. Restoration on the historic gatehouse, which has been protected by a Preservation Restriction, will begin this summer. The work is aimed at stabilizing the structure to prevent further deterioration. There are opportunities for private contributions to both the park and the gatehouse.

Ron Brown gave the treasurer's report.

Arlene then introduced the evening's speaker, State Representative Ruth Balsler, a champion of land protection and lead sponsor in the House to prevent loss of public open space to other uses.

Balsler began by giving a short summary of her career in the legislature. In 2000 she

published a report on the amount of public open space lost to other uses between 1989 and 1999, despite being protected by Article 97 of the Massachusetts constitution. In the report it became clear that State funding for schools and other public buildings created an incentive for municipalities to take open space for new buildings, rather than rehabilitate old ones. Legislation signed by Governor Cellucci reversed this incentive and supported the idea that, "Parks are as important as fire stations." A study in 2005 showed a slower but still continuing rate of "protected" land loss.

The current land disposition policy of the Executive Office of Energy and Environmental Affairs is to discourage the taking of public open space. Balsler feels that this policy needs to become law and to include a requirement for replacement with land of equal value, i.e. No Net Loss. She has introduced such a bill in several sessions of

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## Green Space - An Essential Resource

Is parkland available for building when competing town needs arise? Green Space president says no. A No Net Loss Policy and Land Acquisition Fund make sense for Brookline.

Parkland is not free land to be used as *surplus land* when the need arises. Green space serves the whole community. It is a vital asset that must be protected and can, indeed, be justifiably increased.

Well-designed, accessible open space is crucial to public health, supporting a physically active and healthy population. Additionally, there are links between open space and a healthy environment. Green space improves air quality and reduces the growing problem of the urban heat island effect which contributes to climate change. Urban greening helps reduce the negative impacts of stormwater pollution and flooding, since the hydrologic cycle of precipitation and evaporation has been altered due to population growth and development. Green space helps protect our wetland resources and plays a significant positive role in controlling stormwater and flooding, which is predicted to worsen with climate change. Open space preservation strategies can even help reduce energy consumption.

No one in Brookline will benefit from reduced open space. The taking of open space will come with many negatives, is often irreversible, and will not solve immediate problems. A no net loss of open space is the only forward-looking policy that protects Brookline's quality of life and environment.

Brookline needs a land acquisition fund that allows the purchase of private property when community commitments require additional space (the Open Space Plan recommends additional 35 acres of open space to meet population demands). Intelligent planning for the future would in-

clude such a line item in the Town's annual budget as well as other ongoing strategies to fund land acquisition for open space and other Town needs.

Very careful analysis of Town and school needs, basic assumptions about our goals, and alternatives must be part of any major decisions. If, for example, after examination of the school program, the need for increased classroom space is determined; this still is not a reason to diminish open space. Alternatives to such drastic measures can be found with creativity and flexibility and smart planning. It is hard to consider options not previously considered, to think outside the box; but within the scope of the possible, let's never rush to a solution which includes giving up the green spaces that add so much to the quality of our lives.

Parkland is not free land because it is owned by the Town. Parks, fields, and natural areas provide for citizens young and old; they are essential. The solutions to town problems do not lie in the reduction of green space.

*Arlene Mattison, President*

Larz Anderson Park



## Land Protection in Brookline: Accomplishments, Challenges & Opportunities

On February 10, 2014 over 60 people attended a Land Protection Forum at Town Hall sponsored by the Brookline Neighborhood Alliance (BNA) and Brookline GreenSpace Alliance (BGSA). This was the first time that five town-wide groups participated together on a panel on this important subject. Each speaker approached the topic of land protection in Brookline from a unique perspective.

Brookline is 6 square miles and has some of the densest tracts in Massachusetts; there are challenges and opportunities to help preserve the open space that enhances our community, and this forum is a first step to understanding how we are doing and what we need to do next.

To see how you can get involved please visit Brookline GreenSpace Alliance ([www.brooklinegreenspace.org](http://www.brooklinegreenspace.org)).

Sean Lynn-Jones, co-chair of the Brookline Neighborhood Alliance, moderated the panel of speakers from the Brookline Conservation Commission, the Neighborhood Conservation District Commission, the Brookline Conservation Land Trust and the Brookline GreenSpace Alliance. Ernest Cook, senior vice president and national programs director of the Trust for Public Land and also a board member of the Brookline GreenSpace Alliance, spoke from a national perspective about land protection.

The first speaker, Kate Bowditch, chair, spoke for the Conservation Commission. The Commission's goal is to preserve private open space because a substantial amount of environmentally significant land is privately owned. Their prime concern is the potential subdivision of larger privately owned parcels. The commission tries to work with owners to find tools

that will foster conservation. From the landowners' point of view, these tools can also be helpful in estate planning. Available options include Conservation Restrictions (CR), transfer of ownership to Land Trusts, conservation of agricultural land, and other tools described on the Conservation page of the Town website under Departments.

Paul Bell, Chair of the Neighborhood Conservation District Commission described this relatively new land protection tool in Brookline, approved by Town Meeting in November of 2011. The Hancock Village Conservation District is the first such Neighborhood Conservation District in Brookline. Town Meeting in May will consider a warrant article to establish a second district called the Greater Toxteth Neighborhood Conservation District. Neighborhood Conservation Districts can focus on open space and landscaping.

Arlene Mattison, president of Brookline GreenSpace Alliance (BGSA) concentrated on the protections for Brookline's parklands. She described the process that led to BGSA holding the conservation restriction on the Fisher Hill Reservoir site. When the state sold the land to the Town at a below market price, it required that a third party hold the Restriction. This requirement reflected the inadequacy of current Article 97 legislation protecting public open space (see article on page one in this issue). BGSA was asked by the Town to take on this role. A park is currently under construction on the site.

Bills in the Massachusetts House and Senate are intended to increase the protection for Article 97 land by requiring replacement by land of equal value when protected open space is taken for another purpose. The articles in question are Sen-

ate 361/ House 657. See pages 1 and 2 for more on this subject.

Perspectives on land protection from the Brookline Conservation Land Trust were presented by Lewis Edgers, one of the trustees. The mission of the Trust is to preserve and conserve natural resources by being the holder of Conservation Restrictions or owning land outright. The properties owned by the Trust are: the Walnut Street Park, the Sargent-Beechwood Nature Walk and the Cottage Street Preserve. These properties have new signage for visitors showing that there is public access. There is also a Conservation Restriction on private property on Boylston Street, which does not have public access.

The last speaker, Ernest Cook, senior vice president of Trust for Public Land (TPL) spoke about financing land conservation. Ernest oversees the national divisions of Trust for Public Land that provide TPL's conservation services. These include Conservation Transactions, Conservation Vision/GIS, Conservation Finance, Federal Affairs, and the national Parks for People (urban) program. Since joining TPL in 1980, Ernest has significantly expanded TPL's geographic and program scope, lay-

ing the groundwork for TPL's land conservation programs in New England and the Midwest.

Cook described various ways to fund land acquisition:

- Taxes to pay for land acquisition (sales tax, cell phone tax, etc.)
- Stormwater utility rates to make green infrastructure improvements; Philadelphia's current efforts are a good example.
- Community Preservation Act (CPA) funding which is a surcharge voted by a community on its property tax and partially matched by state funds. He recommended that Brookline reconsider the CPA, perhaps with a lower rate of surcharge.

An Open Space Plan is essential to all these efforts.

Questions and discussion followed the presentation; included were what funding sources are available to acquire Brookline land; the creation of a Land Acquisition Fund similar to the Housing Fund; the importance of preserving open space for stormwater management; the relationship of open space to climate change issues.

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Forum participants (left to right): Ernest Cook, Lewis Edgers, Arlene Mattison, Sean Lynn-Jones, Kate Bowditch and Paul Bell.



## Land Protection in MA: continued

One example of a recent court decision that has limited the application of Article 97 is *Curley v. Town of Billerica*, decided by the Land Court in August 2013.<sup>3</sup> In this case, the Court determined that land taken or acquired for playground use *does not* come under Article 97 protection because the land has been improved. Many of our open spaces include playground spaces, so this court decision is cause for great concern because it opens the door for towns to transfer or build on land that contain playgrounds without offsetting the loss by providing other open space.

In order to strengthen land protection for municipal open space, we need to put into law what is now only a policy. A bill pending in the MA legislature would address the issue: The Public Lands Preservation Act (PLPA), sponsored by Representative Ruth Balser (H.657) and Senator Jamie Eldridge (S.361). These bills propose codifying the “no net loss” policy and requiring an intensive, honest analysis of alternatives to disposing of the land. They would further require that land of equal acreage, market value, and natural resources value must be provided in exchange for the land disposed of, according to [protectmassenvironment.org](http://protectmassenvironment.org).<sup>4</sup>

The Environmental League of MA has long supported this legislation, which has been filed in several sessions, because it would stop and correct what is currently a short-sighted conversion of some of Massachusetts’ most pristine lands; PLPA would ensure a commitment to sound land protection well into the future. Several other conservation groups—including the Brookline Conservation Commission and the Brookline GreenSpace Alliance<sup>5</sup>—also support PLPA and are calling for reform, and we are urging our legislators to listen.

*Erica Mattison & Alicia Juang,  
Environmental League of MA*

Learn more about ELM’s work at [environmentalleague.org](http://environmentalleague.org)

<sup>1</sup> [http://protectmassenvironment.org/article\\_97\\_lands.htm](http://protectmassenvironment.org/article_97_lands.htm)

<sup>2</sup> <http://www.newtonconservators.org/article97.htm>

<sup>3</sup> 21 LCR 442, August 8, 2013; online at <http://masscases.com/cases/land/21/21lcr442.html>

<sup>4</sup> [http://www.protectmassenvironment.org/public\\_lands\\_preservation\\_act.htm](http://www.protectmassenvironment.org/public_lands_preservation_act.htm)

<sup>5</sup> [http://www.protectmassenvironment.org/PLPA\\_supporters.htm](http://www.protectmassenvironment.org/PLPA_supporters.htm)

## Land Forum continued

Other suggestions were a local Article 97 No Net Loss law, and a retry of the CPA which was previously defeated in Brookline.

Following the questions and answers portion of the program, Arlene Mattison presented each of the panelists with a copy of the book *Landscapes of Brookline, An Enduring Legacy*, published by Brookline GreenSpace Alliance.

*Notes for this article were taken by Deborah Rivers.*

The session was taped by Brookline Interactive Group and is available on their website: <http://brooklineinteractive.org/content/land-protection-brookline-forum-21014>

## Land protection— from a Planning Perspective

*Marian Lazar recently spoke with Planning and Community Development Director, Alison Steinfeld and Lara Curtis Hayes, Senior Planner.*

**ML:** How do you see the role of planning in the protection of open space?

**AS:** We need to look at two categories of green space: private and public. When considering private green space, it is important to look at the zoning on large underdeveloped parcels and consider whether it will lead to the best use of the property and be in the best interest of the town. If a large property, such as Pine Manor, were subdivided into 10,000 square foot lots, the result would have implications for open space and potentially put an added burden on our schools. A more efficient use for such land could be to preserve open space with clustered housing on a portion and keep the rest open and green. The protection of public land depends on its status under Article 97 and on deed restrictions that may have been imposed at the time of purchase or donation. We need to clarify the status of our parks and open spaces to be sure they are properly protected.

**ML:** What mechanisms do you see for the acquisition of open space for the town?

**AS:** The state provides LAND Grants and PARC Grants which provide funds under certain circumstances. They require matching funds from the municipality seeking funds. In the future Brookline could, subject to statutory authority, explore the possibility of establishing an open space fund similar to the Brookline Housing Trust Fund, which is partially funded by developers of buildings of six or more units, in lieu of providing affordable units.

Maybe it would be wise to look at the Town’s Comprehensive Plan (2005 - 2015) and assess how the goals set in that plan have been met and identify goals and strategies that have not yet been met. Let’s decide which of those are important and work on accomplishing them. Producing a new plan is labor intensive and time consuming.

**ML:** Do you have any advice for the town?

**AS:** Now is the time to take thought about how we will deal with our large parcels of unprotected green space. We need to be ahead of the curve, to be able to be proactive or at least know how to react when a piece of property becomes available.

### BROOKLINE OPEN SPACE

		NUMBER OF ACRES	PROPORTION OF TOWN ACRES
Permanently protected from development	<i>public</i>	457.76	10.5
	<i>private</i>	48.24	1.1
Unprotected	<i>public</i>	145.99	3.4
	<i>private</i>	502.7	11.6
<b>Total</b>		648.69	15.0

*Source: Open Space 2000*



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## Annual Meeting

continued

the legislature. The bill would require approval by the local town government and conservation commission as well as a vote by the state legislature. In closing, she urged constant vigilance in the protection of local open space.

Vice President Anita Johnson introduced the slate of board members which was accepted unanimously and thanked Ryan Pace for his service on the Board.

In closing, Mattison gave the BGSA's holding of a conservation restriction on Fisher Hill Reservoir Park as an example of state policy to protect land in the absence of a no net loss of public land law.



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## BGSA Friends Groups Coffee

Brookline GreenSpace held the annual Friends Groups Coffee on March 5, at Town Hall. Parks and Open Space Director, Erin Gallentine, spoke on developments at Fisher Hill Reservoir Park.

This coffee is an opportunity for volunteers from across town to share experiences, successes and events in their local parks.

BGSA provides support to our member organizations and park volunteers. We encourage citizen initiative and stewardship in local parks, school grounds, median triangles, street tree lawns and conservation areas throughout Town.

