

Brookline GreenSpace Alliance is a non-profit membership organization dedicated to the enhancement of open space in Brookline by supporting citizens in caring for their green spaces.

PLACE

Spring 2016



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 Friends of Lawrence Park
 Friends of Leverett Pond
 Friends of Linden Park
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Editor Marian Lazar

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MACC Executive Director, Eugene Benson, speaking at the annual meeting

BGSA Annual Meeting

The speaker at the April 20th BGSA annual meeting was Eugene Benson, Executive Director of the Massachusetts Association of Conservation Commissions (MACC). In 1956 concerned citizens came together to prevent proposed development of an Ipswich marsh. They provided the impetus for passage of the Conservation Commission Act in 1957, authorizing cities and towns to establish

commissions to protect open space. The MACC was founded in 1959 to encourage the creation of conservation commissions and today, every municipality in Massachusetts has a commission.

Mr. Benson went on to discuss the value of open space for public health and wellness and the importance of citizen engagement in keeping parks as parks. Once a park is converted to another use, it is "gone forever." He then spoke about Article 97 (see article page 3) and its limitations. A land disposition policy formulated in 1998 by the Office of Energy and Environment sets forth stringent requirements for the transfer to another use of Article 97 protected land, including:

- no alternative for the change of use of open space
- no net loss of open space
- a unanimous vote by the Conservation Commission
- a unanimous vote by the Park and Recreation Commission
- a 2/3 vote by the both houses of the legislature

However, this is a policy and not a law. In addition the State Judicial Court and the Land Court have limited the land that is protected by the article. (See page 4)

In closing Benson said that the best protection for open space is the clarification of the deeds covering the properties that the purpose for which the land was acquired or donated was for use as open space. In addition, MACC is working to strengthen



Rob Daves, BGSA Secretary with new board member Bob Schram and Sean Lynn-Jones



Parks and Open Space Director Erin Gallentine, BGSA President Arlene Mattison and Park & Rec Vice Chair Nancy O'Connor

Riverway Park Site Honors Kitty and Michael Dukakis

This fall will see the dedication of Riverway Park to Kitty and Michael Dukakis. Plantings of native shrubs and trees will cover the steep slope of the berm down from the Longwood T stop to the park path along the Muddy River. The site will include a granite plinth honoring the Dukakis' dedication to preservation and restoration of the Emerald Necklace Parks.

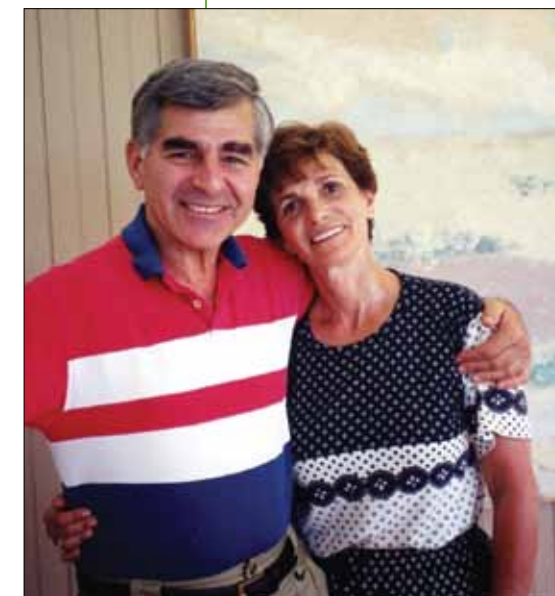
In December 2014, the Board of Selectmen accepted a grant from the Brookline 300 Legacy Fund to support improvements to the Michael and Kitty Dukakis Riverway Park Dedication Project and established a Special Fund to accept gifts and grants toward this initiative. The Town has since received over \$67,000 in additional funding for the dedication project and improvements to Riverway Park. At the Selectmen's meeting on April 12, the Brookline GreenSpace Alliance presented a ceremonial check for \$10,000 for this project.

In a letter to the Selectmen, Erin Gallentine, Parks and Open Space Director said,

"We are pleased with the interest in and enthusiasm for this well-deserved recognition for Michael and Kitty Dukakis and recognize all those that have provided the resources to make this effort possible. The Brookline GreenSpace Alliance deserves special recognition from the Board of Selectmen for their support to not only everyday maintenance and management of the park system in Brookline, but also legacy projects such as the Michael and Kitty Dukakis Dedication."



L to R: Arlene Mattison, Neil Wishinsky, Bernard Greene, Nancy Daly, Erin Gallentine, John Bain and Jean Stringham. Town Administrator Mel Kleckner stands at the rear.



Above: Michael and Kitty Dukakis.

Below: A quote from Michael Dukakis "Brookline's parks are one of the things that makes our town such a special place. So are parks like the Emerald Necklace which we share with Boston and the broader community. They must be protected and nurtured, and that is what the GreenSpace Alliance does so well."

Details, text and planting plan for the Dedication are on the back page of this issue

When is a playground not a playground?

This article originally appeared in the Spring 2014 issue of PLACE. Since then more court decisions have further limited the scope of Article 97.

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.

Article 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.¹ 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.²

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 2013.³ 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. **(Editor’s note: Since this article was written, the Massachusetts Superior Court has found that playgrounds can be protected under Article 97, depending on the purpose for which the land was acquired.)**

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.⁴

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 Alliance⁵—also support PLPA and are calling for reform, and we are urging our legislators to listen.

Erica Mattison & Alicia Juang, Environmental League of MA

Other Cases

In March, 2013 the Supreme Judicial Court (SJC) issued its decision in *Mahajan v. DEP*, holding that the Boston Redevelopment Authority’s (BRA) proposed redevelopment of Long Wharf in Boston is not subject to Article 97 of the Amendments to the Massachusetts Constitution. The case ended up before the SJC after ten residents appealed the decision of the Massachusetts Department of Environmental Protection to issue a license to redevelop a portion of BRA-owned land on the seaward end of Long Wharf. The SJC examined both the BRA’s 1964 urban renewal plan and the BRA’s 1970 order of taking for Long Wharf. The SJC concluded that, although the urban renewal plan included among its many objectives the provision of public ways, parks, and plazas, the overarching purpose of the plan was to eliminate urban blight through redevelopment.

In August 2015, the Long Wharf decision was overturned. Long Wharf has been subjected to a use restriction since 1981 as part of a federal grant, authorized by the 1965 Land and Water Conservation Fund Act, which allowed the BRA to reconstruct Long Wharf in exchange for agreeing that the land developed with the funds would not be “converted to other than public outdoor recreation use.” BRA took the position that the pavilion at the end of the wharf did not fall into the restricted area, and therefore could be developed. Two former National Park Service (NPS) employees, alerted by newspaper articles discussing the potential development, notified the NPS about an earlier 1980 map which included the pavilion in the restricted area. After considering the additional evidence, NPS changed its position and concluded in its final decision that the pavilion was in the restricted area, and therefore could not be converted to commercial use.

The key lesson of the SJC’s decision is its emphasis on the importance of examining the original acquisition documents when a question arises about the applicability of Article 97 to a given parcel of land. Just because it looks and feels like a park today does not mean it was originally acquired for such purposes. While the current use of the site could provide supporting evidence of the purpose of the original taking, the SJC has now clarified that the original taking (plus any subsequent deeds or recorded restrictions) are the primary indicators of such purpose. A second point highlighted by this decision is that there are other possible protections for open space. Grants from the Federal Land and Water Conservation Fund require that land not be subsequently developed.

The Appeals Court has yet to rule in a case where citizens sued to prevent the Town of Westfield from using a playground to build a school. At the hearing both the question of indication of purpose and prior use were discussed. The common law doctrine of ‘prior use’ requires a majority vote of the legislature to authorize any changes of use of public land to inconsistent uses.

A different threat to Article 97 protected land was recently decided. A Berkshire Superior Court judge has ruled that Kinder Morgan’s Tennessee Gas Pipeline Co. may build a natural gas pipeline through the Otis State Forest. MassDEP refused to convey the land without first gaining a two-thirds vote of the Legislature. The U.S. Natural Gas Act grants eminent domain powers to interstate pipeline companies and pre-empts any state provision.

In conclusion, this is a fluid situation requiring constant vigilance by activists

¹ http://protectmassenvironment.org/article_97_lands.htm

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

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

⁴ http://www.protectmassenvironment.org/public_lands_preservation_act.htm

⁵ http://www.protectmassenvironment.org/PLPA_supporters.htm

Learn more about ELM’s work at environmentalleague.org

Friends Of Larz Anderson Park Temporary Sculpture Installation

Friends of Larz Anderson Park (FLAP) was founded by the late Joanna Wexler and Dorothy Baldini. Since 1989 it has worked with Parks and Open Space to obtain grants for the creation of an historic restoration master plan, protect the park from expanded athletic facilities and school construction, and has suggested improvements and brought maintenance issues to the attention of the Department. After the deaths of the founders, the group has been less active.

New members have recently reinvigorated the group, and FLAP is sponsoring the temporary installation of two sculptures by local artists at the top of the hill in the lawn area between the existing terrace and the skating rink. Art on the grounds of the former Anderson estate recall Isabel Anderson producing outdoor dramatic performances and the many sculptures that filled the former italiante garden, now the site of the skating rink.

The sculptures in the exhibition are “Golden Arch” by Murray (Mac) Dewart and “Reclining Blade” by Peter Haines. Mac Dewart is an internationally recognized sculptor who during his 40 year career has created large private and public sculptures across the U.S., China, Israel and Peru. He lives in Brookline and has fulfilled commissions for the Town, Boston, Harvard, the Museum of Fine Arts and many other institutions. Peter Haines is also nationally and internationally known, with solo exhibitions in Boston, New York City, St. Louis and Ohio, more than 70 group shows and public sculptures installed in China and South Korea. He lives in Cambridge. Both he and Mac are founding members of the Boston Sculptors Gallery. The sculptures should be installed by the end of May.

This project is supported by the Brookline Parks and Recreation Commission and by the Brookline GreenSpace Alliance. The artists have agreed to donate their works for an 18 month period, without charge, commencing in May 2016, for the enjoyment of park visitors. FLAP will pay for installation, removal and signage, and for insurance required by the Town. The artists will be responsible for maintaining their sculptures.

The Friends have raised the funds necessary to cover expenses for installation and insurance. The Brookline GreenSpace Alliance has agreed to be FLAP’s fiscal agent for the project so that gifts to FLAP can be tax deductible. Donations to FLAP for the sculpture project can be made to Brookline GreenSpace Alliance with a note indicating that the funds are for the Friends of Larz Anderson Park sculpture project. For further Information about the project or FLAP please contact Sandy Batchelder at slbatch@comcast.net or 617-566-5752.

Golden Arch by Mac Dewart



Reclining Blade by Peter Haines



BGSA grant sends kids out into the natural world!

A grant from BGSA will again make it possible for Brookline’s environmental educator, Stephanie Springer, to bring all Brookline’s first graders to Ward’s Pond in the Olmsted Park section of the Emerald Necklace. The children will have a chance to learn about pond life, close-up. We would like to make this an annual environmental educational experience.



Photographs from last years trips to Ward’s Pond in the Emerald Necklace



New Wayfinding Signage Dane Park, Skyline Park, Hoar and Lost Pond Sanctuaries



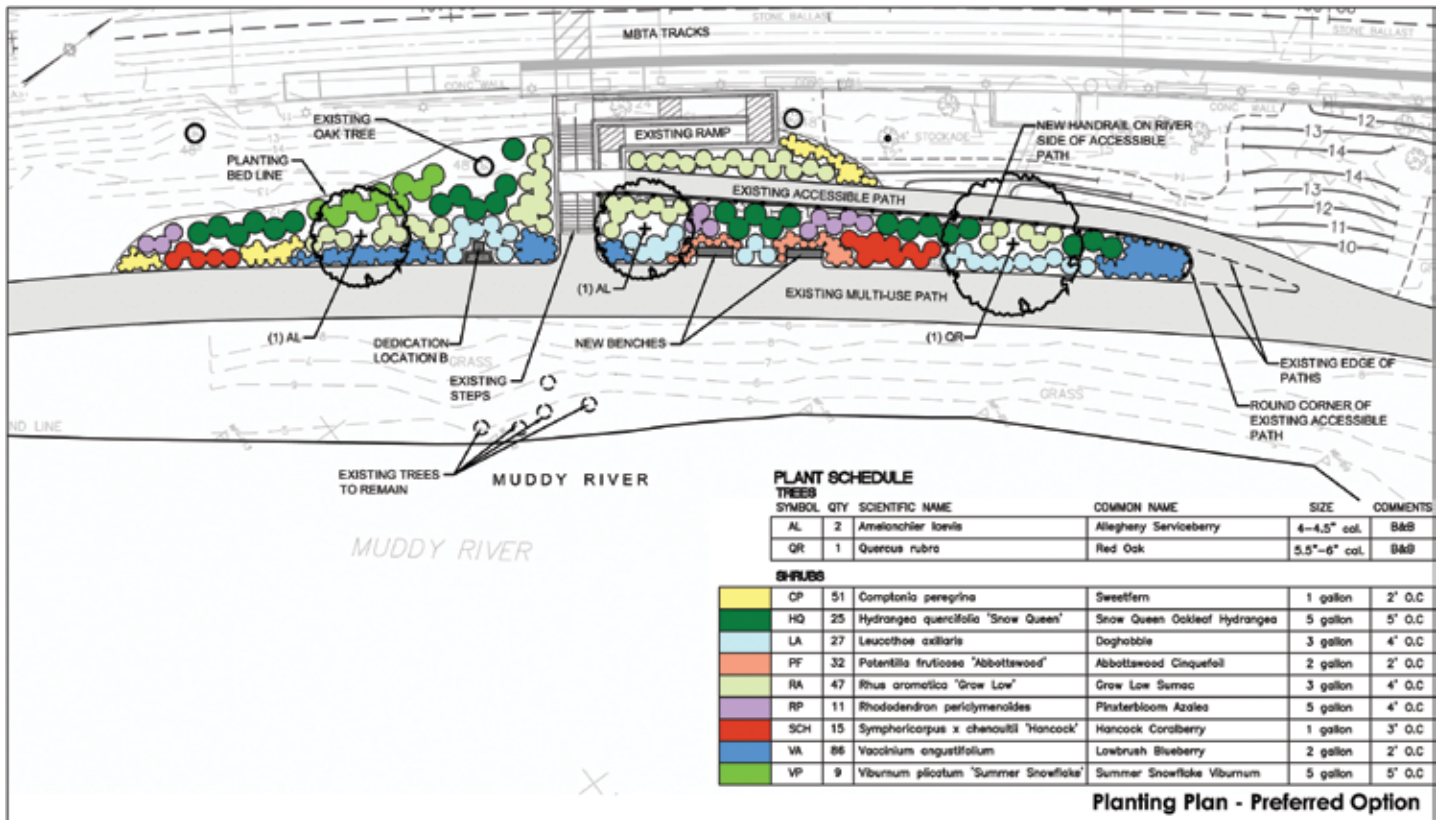
Two of the new signs that will guide and inform visitors to parks and sanctuaries. These are similar in design to ones already installed at Hall’s Pond Sanctuary



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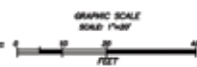
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Riverway Park Dedication, Brookline - Preferred Conceptual Option

Brookline, MA

Prepared by Pressley Associates, Inc., Boston, MA for the Town of Brookline Parks and Open Space Department



L6
August 2014

Dukakis Dedication

Riverway Park, Brookline

Dedicated to Kitty and Michael Dukakis

With deep appreciation and gratitude for their commitment to the protection, preservation and restoration of the Emerald Necklace and the Olmsted legacy in Massachusetts and in honor of their lifelong contributions to and support of the magnificent Park and Open Space system in Brookline.