

Remarks Prepared for Board of Selectmen's Meeting, 5/28/19

The Town Counsel's memo of 5/22/19 recounts that Town Meeting decided in 1992 that this land would be transferred to the Conservation Commission for conservation purposes; and that that article was recorded in the registry of deeds 24 years later, in 2016. Thank you, Selectmen, for seeking this clarification from Town Counsel. To my understanding, the town has yet to publicly acknowledge that this was an aberration; and that it has tremendous implications for where we find ourselves today; and no town official has taken responsibility.

It was already known to town officials, and deliberately kept from the public, that this was rightfully conservation land, when in 2015 the Town Administrator issued the memo stating that the site had been approved by the Board of Selectmen for a dog park. By the time the project came before the Conservation Commission in 2016, it had considerable momentum. By now many "i"s have been dotted, and "t"s have been crossed; I am asking the Board of Selectmen to care about the distinction between what is presented as evidence, and what is true.

Persistent biases in the information presented by the town, and to the town, are reflected even in last week's memo to the Selectmen from Town Counsel: She references "the BOH vote from 2015 not to support the proposed dog park" and states that "the dog park has been engineered and reengineered and it is my impression that the potential concerns have been substantially minimized. I do not believe the BOH has taken any recent position on the dog park."

Knowing that the BOH reiterated its concerns in 2017, and that they were not addressed, this did not sound right to me, so I contacted the Board of Health today. In fact there is no basis to suggest that the BOH's position has changed since its statement of December 1, 2017, that: "The board unanimously endorses that the design should insure a water tight barrier whereby 'no contamination from dog wastes could enter the groundwater tributary to South Pond.'"

I also want to point out that, while town counsel states that the BOH's position "has no legal import, since the Dog Park does not meet any threshold for formal BOH review and permitting," the BOH's objections overlap with the requirements of the Aquifer Protection District (APD) bylaws. Those bylaws require a "subsurface waste disposal system(s) subject to regulation under Title 5 of the State Environmental Code." An APD review was not scheduled to take place at all, until it was advocated by concerned citizens that it was necessary.

It is understood that the formal appeal of the APD Special Permit was dismissed in Middlesex Superior Court. Please be informed that the appeal was dismissed on a technicality, and the merits were not heard. I am respectfully requesting that the Selectmen, who are also the Water Commissioners for the town, become familiar with the merits of that appeal.

Town counsel's memo of 5/22/19 also states that "The proposed dog park is within an Aquifer Protection District, but is not a prohibited use within that APD, pursuant to an opinion of the Building Commissioner." Please understand that the Building Commissioner's opinion, dated 1/2/18, is directly contradicted by Title 5 of the State Environmental Code, specifically 310 CMR 15.000.

In addition to the BOH's objections, and consistent with the standards asserted in the APD bylaws, similar concerns about the implications for Lake Cochituate were registered by the town of Wayland's Surface Water Quality Committee and the Cochituate State Park Advisory Board. Widely held concerns expressed by multiple entities would likely have deterred the Selectmen from initially approving this site; had they received an appropriate response when they inquired of the Town Administrator as to whether there was opposition to locating a dog park at Middlesex Path; and had it been their legitimate role to make such an approval.

I've chosen not to focus on Article 97 here. Our counsel at the Middlesex Path Neighborhood Association advises that it does apply. If the project moves forward, it will be up to the courts to decide.

People may argue that the rules have been followed, but there is no question that the spirit behind these laws, bylaws, and regulations, has been violated. It may be more comfortable for the Board of Selectmen to ride the momentum behind this project; but I am here to urge you to take a higher path, and to delay further movement until a preponderance of irregularities in the town's process have been properly investigated and their implications exposed. There needs to be an honest analysis of the relationship between these irregularities and where we are now.

Respectfully submitted,

Melissa Probst

P.S. In response to the point raised by Ms. Adelman-Foster, the reason there was not a focus on the conceivable nuisance issue is that this would have been a particular concern of abutters; and the abutters were not consulted in the town's decision to locate a dog park in our neighborhood.