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 Felicia S. Vasudevan

Ann M. O'Neill, Senior Counsel

*Please respond to Quincy*

July 29, 2016

Matthew Gardner, Chairman  
 Natick Conservation Commission  
 Natick Town Hall  
 13 East Central Street  
 Natick, MA 01760

**Re: Middlesex Path**

Dear Mr. Gardner:

To supplement my December 16, 2015 letter to you, a copy of which is enclosed with this letter, I wish to clarify the status of Middlesex Path.

The Town of Natick acquired the Middlesex Avenue property by two (2) separate deeds in 1968 and 1972, respectively. In the 1968 deed the grantee is the Inhabitants of the Town of Natick. In the 1972 deed the Grantee is the Town of Natick. Neither deed provides that the land be used for a particular purpose. The effect of the two (2) deeds was that the land was held by the Board of Selectmen, for general municipal purposes.

Natick Town Meeting transferred the Middlesex Path property to the Conservation Commission by two (2) separate votes. The 1992 Fall Annual Town Meeting voted under Article 24 to transfer several of the Middlesex Path lots to the Conservation Commission for conservation purposes. The 2000 Natick Fall Annual Town Meeting voted under Article 29 to transfer several lots, including one (1) lot in the Middlesex Path property (0 Hunter Court End), to the Natick Conservation Commission for conservation and passive recreation use under Massachusetts General Laws Chapter 40, Section 8C.

As noted in my December 16, 2015 opinion to you, these two (2) Town Meeting votes were not recorded with the Middlesex County Registry of Deeds at that time. The 2013 Massachusetts Supreme Judicial Court decision cited in that December 16, 2015 letter provides that a Town Meeting vote to designate land for conservation purposes is not enough to subject property to the interests covered by Article 97 of the Amendments to the Massachusetts Constitution, absent recordation of a restriction on the title.

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Natick Town Hall  
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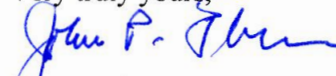
This issue arose during the 2016 Natick Spring Annual Town Meeting. Following the dissolution of Town Meeting attested copies of the two (2) Town Meeting votes were recorded with the Middlesex South Registry of Deeds on May 12, 2016. The 1992 Town Meeting vote was recorded at Book 67421, Page 505. The 2000 Town Meeting vote was recorded at Book 67421, Page 502. Copies of those two (2) recorded Town Meeting votes are enclosed with this letter.

In my opinion, the fact that attested copies of those two (2) Town Meeting votes have been recorded with the Registry of Deeds is a "recording of a restriction on the title" which makes the Middlesex Path property subject to the protections of Article 97 of the Amendments to the Massachusetts Constitution (Article 97). There is no deed which needs to be recorded in this context. The Town of Natick already owned the Middlesex Path property, as noted above. In order to make the Middlesex Path property subject to the protections of Article 97, the two (2) Town Meeting votes needed to be recorded.

The fact that the Middlesex Path property is now subject to the protections of Article 97 does not necessarily mean that a dog park is prohibited on the Middlesex Path property. As discussed on page 3 of my December 16, 2015 opinion, to answer that question the Conservation Commission must determine whether the proposed use is consistent with the provisions of Chapter 40, Section 8C of the Massachusetts General Laws, such as passive recreation (e.g. dogs walking or running), and preserving and maintaining the natural features of the site, or whether it will be more in the nature of active recreation, such as organized activity, competitions, shows, etc., or will disturb or alter a significant portion of the site.

If you or the Conservation Commission have any questions or need any further information, please contact me.

Very truly yours,



John P. Flynn

JPF:lac

Enclosure(s)

cc: Martha L. White, Town Administrator  
William D. Chenard, Deputy  
Town Administrator/Operations  
James Errickson, Director of Community and  
Economic Development

939648v1

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*Please respond to Quincy*

December 16, 2015

Matthew Gardner, Chairman  
 Natick Conservation Commission  
 Natick Town Hall  
 13 East Central Street  
 Natick, MA 01760

**Re: Dog Park**

Dear Mr. Gardner:

In my opinion, the proposed dog park to be located in the area of Middlesex Park would not be subject to Article 97 of the Amendments to the Massachusetts Constitution, for the following reasons.

Article 97 of the Amendments to the Massachusetts Constitution provides in part:

"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...Land and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court."



**MURPHY, HESSE, TOOMEY & LEHANE, LLP**  
**Attorneys At Law**

Matthew Gardner, Chairman  
Natick Conservation Commission  
Natick Town Hall  
December 16, 2015  
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The 1992 Natick Fall Annual Town Meeting voted under Article 24 to transfer to the Conservation Commission, "for conservation purposes pursuant to G.L. c. 40, Section 8C", the care custody, management and control of land including the land on which the dog park would be located. The 2000 Natick Fall Annual Town Meeting voted under Article 29 to transfer the care and custody of several parcels of land from the Board of Selectmen to the Conservation Commission "for conservation and passive recreation". The proposed dog park would be located on one of those parcels.

From the information available to me neither of those Town Meeting votes has been recorded with the Middlesex County Registry of Deeds.

In 2013 the Massachusetts Supreme Judicial Court (the Supreme Judicial Court) cited a prior decision of that court which held that a town meeting vote to designate for conservation purposes land that had originally been taken for tax purposes did not subject that land to Article 97 protections absent recordation of a restriction on the title. Without the execution or recordation of a deed containing the conservation, the land "never became specifically designated for conservation purposes in the first instance" and accordingly "was not held for a specific purpose" under Article. 97, so "compliance with the provisions of art. 97...was not required" The Supreme Judicial Court held in that 2013 decision "This was true despite the clear intention of the town meeting members to hold the property for conservation purposes...As the plain language of art. 97 indicates, for land to be subject to the two-thirds vote requirement on disposition or use for other purposes, it must be '*taken or acquired for (the) purpose*'" of protecting interests covered by art. 97". Mahajan v. Department of Environmental Protection, 464 Ma.. 604, 615, 616, 984 N.E.2d 821, 830 (2013).

In my opinion, the proposed dog park would not be subject to the so-called public use doctrine, for the following reasons.

The Massachusetts Supreme Judicial Court held in the Mahajan case cited above: "The prior public use doctrine holds that "public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion...However, that doctrine is only applicable "to those lands which are in fact '*devoted to one public use*' (emphasis added)". Mahajan Department of Environmental Protection, 464 Mass. 604, 616-617, 984 N.E. 2d 821,830 (2013).

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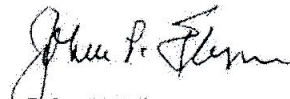
In my opinion, the land on which the dog park would be located is not "devoted to one public use" within the meaning of the Mahajan decision. That land is available for conservation and passive recreation purposes. As long as the dog park is used within those parameters there is no issue with the public use doctrine.

The Natick Conservation Commission must satisfy itself that the proposed dog park use will be consistent with Chapter 40, Section 8C of the Massachusetts General Laws. This is a fact intensive determination that will depend upon the specifics of the proposed use. For example, will the dog park be in fact passive recreation, such as persons walking dogs or dogs running free in an enclosed area? Or will it be more in the nature of organized activity, competitions, shows, etc., which would venture toward active recreation? Will it preserve and maintain the natural features of the locale? Or will it disturb or alter a significant portion of the locale?

In other words, the proposed dog park use is not per se contrary to the provisions of Chapter 40, Section 8C of the Massachusetts General Laws. The Conservation Commission must review the dog park proposal and determine whether that use is consistent with the provisions of Chapter 40, Section 8C of the Massachusetts General Laws.

If you or the Conservation Commission have any questions or need any further information, please contact me.

Very truly yours,



John P. Flynn

JPF:lac

cc: Martha L. White, Town Administrator  
James Errickson, Director of Community and  
Economic Development  
Bryan R. LeBlanc, Esq.

Middlesex South Registry of Deeds  
Electronically Recorded Document

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Recording Information

Document Number	: 74340
Document Type	: VOTE
Recorded Date	: May 12, 2016
Recorded Time	: 02:42:43 PM
Recorded Book and Page	: 67241 / 505
Number of Pages(including cover sheet)	: 3
Receipt Number	: 1941876
Recording Fee	: \$75.00

Middlesex South Registry of Deeds  
Maria C. Curtatone, Register  
208 Cambridge Street  
Cambridge, MA 02141  
617-679-6300  
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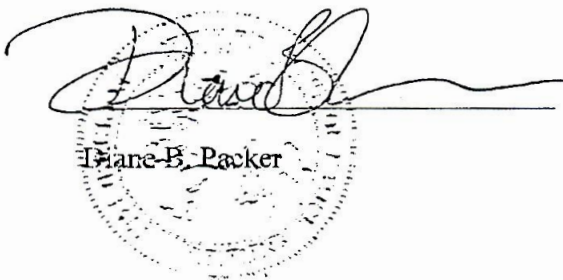
*Diane B. Packer*  
Town Clerk

**TOWN OF NATICK**  
*Office of the Town Clerk*  
[www.natickma.org](http://www.natickma.org)

### **CERTIFICATE OF VOTE**

I, Diane Packer, Town Clerk of Natick Massachusetts, do hereby certify the following vote:

The attached vote on Article 24 of the 1992 Fall Annual Town Meeting was taken on  
October 8, 1992.



Diane B. Packer

PROCEEDINGS CONTINUED  
Annual Fall Town Meeting  
October 8, 1992 1st Session

ARTICLE 24  
(Board of Selectmen)

To see if the Town will vote to transfer to the Conservation Commission, for conservation purposes pursuant to G.L. c. 40, Section 8C, the care, custody, management and control of all or part of the land in Natick shown on the Natick Assessors Maps as Map 42, Lot 36; Map 42, Lot 37; Map 42, Lot 45A; Map 42, Lot 45B; and Map 43, Lot 402, subject to any easements granted concerning said land, or otherwise act thereon.

FINANCE COMMITTEE RECOMMENDATION: The Finance Committee recommends indefinite postponement with regard to the subject matter of Article 24.

VOTED UNANIMOUSLY, to transfer to the Conservation Commission, for conservation purposes control of all or part of the land in Natick as printed above.

ARTICLE 25  
AMENDMENT OF NATICK HOME RULE CHARTER TO MAKE  
MINOR CHANGES IN WORDING  
(Moderator)

To see if the Town Meeting will vote to approve an amendment to the Natick Home Rule Charter and to authorize the Board of Selectmen to take all steps required by law for amendment of the Charter. The amendment makes minor changes in wording necessitated by earlier amendments, court decisions, and events. The amendment shall be in six parts as follows:

Part 1 In Section 2-11 (d), pertaining to publication of the warrant, remove the provision requiring a duplicate distribution of the warrant by deleting the last sentence in its entirety.

Part 2 In Section 3-1 (a), pertaining to elective offices, in the first sentence, delete the words "trustees of the Leonard Morse Hospital". Also in the first sentence, change the name "recreation commission" to "recreation and human services commission." In the second sentence, remove the references to a redevelopment authority and the regional vocational school district so that the entire sentence is changed to read as follows:

In addition, members of a housing authority and representatives to such other regional authorities or districts as may be established by law or interlocal agreement may also be filled by the voters.



Middlesex South Registry of Deeds  
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Recorded Time	: 02:42:43 PM
Recorded Book and Page	: 67241 / 502
Number of Pages(including cover sheet)	: 3
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*Diane B. Packer*  
Town Clerk

**TOWN OF NATICK**  
Office of the Town Clerk  
[www.natickma.org](http://www.natickma.org)

### CERTIFICATE OF VOTE

I, Diane Packer, Town Clerk of Natick Massachusetts, do hereby certify the following vote:

The attached vote on Article 29 at the 2000 Fall Annual Town Meeting was taken on October 10, 2000.



Diane B. Packer

13 East Central Street, Natick, MA 01760  
508.655.6715  
13 East Central Street, Natick, MA 01760

508.647.6430

508.647.6430

Fax:

Fax 508.655.6715

Summer Street, Natick, MA shown on Natick Assessors' Maps as Map 43, Lot 348, known as the Natick Central Fire Station, to a successful proposer who complies with the requirements of the Town's request for proposals, and that such request for proposals specify that reuse of the property be limited to the development of a center for performing and visual arts.

**RECOMMENDATION:** The Finance Committee recommends no action with regard to the subject matter of Article 28. (09/14/2000)

*The sponsor of this article has asked for no action based upon the vote of the Board of Selectmen under Article 27.*

**NO ACTION TAKEN ON THE SUBJECT MATTER OF ARTICLE 28.**

#### ARTICLE 29 (Board of Selectmen)

To see if the Town will vote in accordance with the provisions of Massachusetts General Laws Chapter 40, Section 15A to transfer the care and custody of the following parcels of land from the Board of Selectmen to the Natick Conservation Commission for conservation and passive recreation use as described under the provisions of Massachusetts General Laws Chapter 40, Section 8C:

<u>Street Address</u>	<u>Assessors Map, Lot</u>	<u>Acreage</u>
0 Hunter Court End	43-402	6.160
90 Cottage Street	61-17	2.500
0 Peterson Road Off	15-108	1.300
51 Water Street	64-64	1.290
471 Worcester Street	20-96	.748
0 Tamarack Road	39-36ZB	.742
26 Dover Road	64-42	.540
0 Pleasant Street	63-21B	.290
0 Tamarack Road	39-36	.212
0 Water Street End	64-64B	.170

,or otherwise act thereon.

**RECOMMENDATION:** By a vote of 10-0-0 the Finance Committee recommends favorable action with regard to the subject matter of Article 29. (09/14/2000)

**Requires a 2/3 vote of Town Meeting**

*The purpose of this article is to transfer Town owned property from the Board of Selectmen to the Conservation Commission. The Municipal Surplus Committee during its review found or was made aware of various town owned parcels that qualify to be held as conservation land. Property under the jurisdiction of the Conservation Commission has greater protections from reuse than any other property. Property under a conservation restriction can only have the restriction removed by an affirmative vote of the Conservation Commission, Town Meeting, and the State Legislature.*