

**Re: Postpone Consideration of Article 23**

1 message

Melissa Malone <mmalone@natickma.org>

Mon, Sep 16, 2019 at 7:29 PM

To: Patrick Hayes <phayes.fincom@natickma.org>

Cc: Karis North <knorth@mhtl.com>, Michael Hickey <mhickey@natickma.org>, Bruce Evans <bevans.fincom@natickma.org>, Linda Wollschlager <lwollschlager.fincom@natickma.org>, Frank Foss <moderator@natickma.org>

Hello all - attached please find correspondence from retained special counsel who has been assisting with this project. Pls. let me know if you need further information. Thank you, M.Malone

On Tue, Sep 10, 2019 at 7:17 PM Patrick Hayes <phayes.fincom@natickma.org> wrote:

Folks,

I'm still in Germany until Saturday. Could the Administration and Town Counsel provide guidance and opinions to the concerns of the citizen's questions. It would be helpful in advance of the scheduled hearing. But don't do the best you can.

Patrick

Sent from my iPhone

Begin forwarded message:

From: PAUL GRIESMER <pgriesmer@comcast.net>

Date: September 11, 2019 at 12:16:17 AM GMT+2

To: Patrick Hayes <phayes.fincom@natickma.org>, Bruce Evans <bevans.fincom@natickma.org>

Cc: Paul Griesmer <pgriesmer@comcast.net>, Moderator Natick <moderator@natickma.org>

Subject: Postpone Consideration of Article 23

Reply-To: PAUL GRIESMER <pgriesmer@comcast.net>

I am writing to request that the Finance Committee postpone consideration of Article 23 for Route 27 until some very serious legal questions can be answered.

The action sought under article 23 may very well be illegal because it seeks to convert Article 97 land to public road use. It may very well compound an error under the consent agenda last spring.

Spring town meeting voted article 17 under the consent agenda. This action dedicated Camp Mary Bunker as article 97 land. However, it first sought to take a widened public sidewalk from camp Mary bunker.

The motion was:

"Move that the Town vote to dedicate property, commonly known as Camp Mary Bunker, as described in a deed recorded with the Middlesex South Registry of Deeds at Book 15706, Page 22, subject to the terms and conditions set forth in an Agreement recorded with said Registry of Deeds at Book 15706, Page 26, and modified to include a sidewalk to be constructed thereon as part of the North Main Street (Route 27) improvement project, to Article 97 of the Articles of Amendment to the Massachusetts Constitution."

The Finance Committee heard Article 17 on February 26, 2019.

The Finance Committee writeup said"

"The town believes that Camp Mary Bunker is already Article 97 land. MassDOT and the Mass. Department of Conservation and Recreation (Mass DCR) requested that the town confirm that this land is Article 97 land, prior to the commencement of the Route 27 roadway improvement project, so this article aims to do that. • Land under Article 97 is structured as conservation land or park land. It is restricted to only those uses. Any change of use would require a two-thirds vote from the state legislature. • This motion recognizes the addition of the sidewalk to the deed, and in doing so improves the access to this land for handicapped individuals. • Camp Mary Bunker is dedicated as an open-space park owned by the Town of Natick and is open to the public. It has one pavilion type structure, but it is not a camp."

Under the 2017 SJC Smith vs. Westfield decision, Camp Mary Bunker was undoubtedly Article 97 protected land. This SJC decision indicates that formal Article 97 votes are not necessary for land to become article 97 protected. Any prior use, public designation or public dedication or restriction can suffice.

The Board of Selectmen and Open space committee of the Town listed Camp Mary Bunker in its 2012 Open space report as article 97 land. The deed and the agreement incorporated into that deed restricts it as park and open space land for passive recreation. That agreement and deed were signed and accepted in 1984 by the then selectmen. Camp Mary Bunker was article 97 land before last spring's town meeting – as admitted by the administration.

The plans for Rt 27 show a 7 foot wide strip of frontage of camp mary bunker being "taken" or used for sidewalk and road use. Camp mary Bunker's current frontage already has a 4-5 foot wide sidewalk.

Six days before appearing before FinCom on article 17 of spring TM, the administration filed a required Environmental Notification Form for the rt. 27 project. That ENF was published in 2/20/19. That ENF makes NO mention of any changes to article 97., That oversight or omission is illegal regardless of whether it was inadvertent or deliberate. Article 97 is part of the Mass Constitution which is the highest law in the state.

The ENF REQUIRES disclosure of any article 97 lands being altered. The ENF is the basis for the state permit on Rt 27.

No Article 97 land can be converted to other use without a 2/3's vote of both houses of the legislature. Lacking that vote, town Meeting does not have the authority to include camp mary Bunker land in the revised street acceptance.

CMR 11.03 1 b 3 requires notification of any change to article 97 land under review thresholds. The Town's ENF did not disclose this.


The ENR, ENF publication date, camp mary Bunker deed, Camp mary Bunker agreement (incorporated into the deed, the Rt. 327 plan (see sheet #9), 301 CMR 11a, the 1907 recorded plan for camp Mary bunker and the 2012 open space plan are all attached. Also attached is the smith vs. westfield decision and a write-up about it from KP Law.

It's very concerning that six days after filing the ENF the town admitted the land is Article 97 land. The nature of this matter is that it requires full clarification with MEPA. Otherwise the Rt. 27 project could be impacted.

Further the Camp Mary Bunker deed contains a restriction against conversion to other uses and a right of first refusal for the girl scouts to buy it back if the use is changed.

Melissa A. Malone
Town Administrator
13 East Central Street
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508-647-6410



 **Camp Mary Bunker Article 9.16.19.pdf**
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