

Wellesley's PARKLAND— A PUBLIC TRUST

With development pressures now strongly affecting Wellesley, residents should know about the constitutional and statutory protections that Massachusetts affords to parklands and commons.

TOWNS DON'T "OWN" PARKLANDS for their own uses the way private owners do. Towns hold parklands as a public trust for the benefit of all citizens. Chapter 45 Section 7 of the Massachusetts General Laws provides that land taken or held as a park shall be forever kept open and maintained as a public park.

It is not permitted to build a building larger than 600 sq. ft. on a common or park without permission of the legislature. If a town attempts to do so, it can be challenged in superior court by a ten taxpayer petition.

The ultimate protection for parks is the Massachusetts Constitution. Article 97 of the Amendments provides that land held for conservation and natural resource purposes, including parks, athletic fields and playgrounds, may not be transferred, disposed of, or used for other municipal or private purposes without 1) a majority vote of the board in charge; 2) a 2/3 vote of Town Meeting; and 3) a 2/3 roll call vote of both Houses of the State Legislature, and the Governor's signature.

In Wellesley the Natural Resources Commission is in charge of parks, conservation land, Town Forest, non-school playgrounds and the high school playing fields. In other towns other boards may be responsible for parks and conservation land, but whatever board is in charge, the same *public trust* mandate applies.

A "common" is any land used by the public without interruption for 20 years.

Additional restrictions may apply to particular parks. Some Wellesley parks have been acquired by gift, others by Town Meeting designation, still others by common usage. For example, five Wellesley parks (Beebe, Brown, Perrin, Phillips and Warren) were designated by Town Meeting for future elementary school use. The Natural Resources Commission made a commitment to Town Meeting not to stand in the way of elementary school construction on the five school park sites.

Some parks have been accepted by Wellesley as conditional gifts. In such cases an irrevocable contract or public charitable trust is created in perpetuity, subject to court action determining otherwise. Not even the heirs of the donor, the town or the legislature can change the intent of such a gift.

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Because open space in Wellesley of equal value and usefulness to the town's present holdings is unobtainable, proposals to release or exchange town-owned open space will be considered only on the basis of a 2:1 exchange ratio favoring open space.

*Policy Handbook page 2-5:
Release or exchange of land*

Since construction projects always have enthusiastic proponents, the law and Constitution of Massachusetts strongly protect the rights of the public to the perpetual use of their parks. Because parkland is a public trust, there is a very specific process to follow when it appears that an overriding public interest requires construction on parkland.

The first step is to consult the Natural Resources Commission. A lot of time and money can be saved and misunderstanding prevented by asking Natural Resources for the facts as soon as there is serious interest in building in a park. NRC staff will research the restrictions and limitations pertaining to the park in question, including any pertinent requirements of the Zoning Bylaw.

If, knowing the legal and regulatory situation, the decision is to proceed, the Natural Resources Commission will solicit public input and weigh the need for the project, the appropriateness of the location, the availability of alternative locations, the construction and development impacts, and the applicability of the Commission's 2 for 1 replacement policy.

If a majority of the Commission finds that the value of the proposed project outweighs the loss of open space and is not forbidden by law, a preliminary plan should be submitted to the NRC Director for review and conceptual approval (*Policy Handbook page 3-13*). The proposal then goes to Design Review for recommendations while the Commission solicits further public input, amends the plan, reconsiders the issues of need and location, and takes a formal vote on the application.

If a majority of the Commission votes in favor of the project, the plan proceeds through the town's planning, zoning and building departments and an Article requesting Town Meeting approval is inserted into the next Town Meeting warrant. If Town Meeting approves the project by a 2/3 vote, the project goes to the legislature for a 2/3 rollcall vote. When legislative approval has been given, the project may proceed.

A public trust is not lightly broken. In Wellesley the Natural Resources Commission is the gatekeeper of that trust. The laws of Massachusetts make construction on parkland difficult indeed. There are no guarantees in the statutory process that all hurdles can be overcome, that all approvals can be obtained, or that an appeal by any ten citizens will not be lodged. The people of Massachusetts have chosen to protect their parks, commons, historic landmarks and their quality of life in this way. The process is overwhelming—and overwhelmingly necessary to prevent Wellesley's green space from disappearing.

