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2018 – 2019
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February 28, 2018

Re: Paine Estate/Chesterbrook Woods, Waltham

To Whom It May Concern:

We understand that the City of Waltham is considering the conversion of a 13 acre section of the Paine Estate for the construction of a new school. The disposition of the land for this purpose not only violates the provisions of Article 97 of the Massachusetts Constitution but the restrictions and covenants contained in the Deed to the City of Waltham.

The Massachusetts Land Trust Coalition (MLTC) is a non-profit organization that represents the interest of over 120 land conservation trusts in the Commonwealth. Over the past 150 years, these land trusts have protected thousands of acres for public benefit, often in partnership with state and local government. Land trusts have been pioneers in developing state-of-the-art legal tools to safeguard our natural resources. MLTC has an interest in making sure that lands acquired for open space are protected from proposals that conflict with these purposes.

Under Article 97, land taken or acquired for the “conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources” shall not be used for other purposes or “otherwise disposed of” without the two thirds vote of the legislature.


The Paine Estate was conveyed to the City of Waltham by a deed of gift from Theodore L. Storer and Roscoe W. Brooks, Trustee dated October 15, 1974 and recorded with Middlesex South District Registry of Deeds in Book 12720, Page 280 and confirmed by an Order of Taking recorded in Book 12629, Page 286. This Deed contains certain restrictions and protections that are recited in the Acceptance of Deed executed by the then Mayor of Waltham and recorded in Book 12720, Page 273. These restrictions, by their terms, are effective until the year 2100 and, as stated in the Acceptance signed by the Mayor, are deemed to be authorized by G.L. c. 184 Sections 31-33 as perpetual. As a result of these recordings, the Paine Estate is not only protected under Article 97 but by a separate restriction that may only be released by a cy pres petition that will involve the Supreme Judicial Court and the Attorney General.

We understand that the School Committee is also interested in an abutting parcel known as Chesterbrook Woods, acquired by Order of Taking and by Confirmatory Quitclaim Deed dated June 26, 2001 recorded in Book 33134, Page 54. While this parcel was taken for “all public purposes and municipal purposes”, the City’s acquisition was done at the urging of the Open Space Committee. The land appears on Open Space and Recreation Plans. Trails have been constructed connecting it to the protected Paine Estate and the entire combined acreage is described as Robert Treat Paine/Storer Conservation Land. We understand that a conservation restriction has been proposed several times to protect the Chesterbrook Woods but one has never been recorded.

The fact that an actual restriction has not been placed on Chesterbrook Woods does not defeat the claim that Article 97 protects this parcel as well. As the Supreme Judicial Court has stated in Smith v. City of Westfield (478 Mass. 49 (2017)), “there are circumstances where municipal parkland may be protected by art.97 without any such recorded restriction, provided the land has been dedicated as a public park”. Given the circumstances surrounding the acquisition of this land, its treatment as protected open space by several generations of City officials and committees, we support the contention that Chesterbrook Woods also has the benefits of the protections of Article 97.

MLTC is well aware of the oft competing interests of open space protection and a school committee’s desire for pristine land in a crowded municipality. However, it is the ultimate irony to spend taxpayer money to destroy a historic landscape purchased and protected these last forty-four years with taxpayer money. The conservation assets of these properties cannot be replaced or replicated. We expect the City to carry out the wishes of the donors of this property and the land trust community and continue its efforts to protect this iconic landscape.

MLTC Board of Trustees

By 

William G. Constable, Esq., President