

**Boynton Glidden**

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**From:** "Tina Kent" <tinakent@hotmail.com>  
**To:** <roasis@comcast.net>; <squirrellea@earthlink.net>; <christophe.oliver@comcast.net>; <paul.angelico@verizon.net>; <andythompson67@msn.com>; <cfwhite@comcast.net>; <bglidden@gmchardwoods.com>; <ablisbon@massmed.org>; <tinakent@hotmail.com>; <hbfaulkner@gmail.com>; <brace.jane@gmail.com>; <doverarnolds@verizon.net>; <athompson@developmentguild.com>; <amey@sloan.mit.edu>  
**Cc:** "Gino Carlucci" <pgca@comcast.net>  
**Sent:** Wednesday, November 04, 2009 12:47 PM  
**Attach:** Article 97.doc; Draft Community Goals.doc  
**Subject:** Buy-In of Community Goals by Other Boards

Dear Members of the Open Space Committee,  
 Thanks to all who were able to attend last night's meeting! I really appreciated all your comments and the fact that you voted to approve the Article 97 memo and the Community Goals memo (see enclosed).

As we discussed, over the month of November (and possibly December), you will need to obtain the "buy in" of the Community Goals from other boards and committees. I would suggest that you contact the Chair of each board and get on the board's agenda asap. Be sure to include a copy of Draft #3 of the Community Goals for their review. Because some of our Open Space Members were absent and because some of the boards are more impacted by our Community Goals than are other boards, may I suggest the following assignments:

1. Planning Board - Henry and Paul
2. Board of Health - Jane and Christophe
3. Board of Selectmen - Catherine and All Other Open Space Committee Members Who Want to Attend
4. Parks and Recreation - Rich and Andy
5. Dover-Sherborn School Committee - Sierra and Amey
6. Dover School Committee - Andy and Christophe
7. Conservation Commission - Paul and Henry
8. Assessor - Boynton
9. Library - Amey
10. Council on Aging - Boynton

Hopefully, these "assignments" are satisfactory to you. If not, may I suggest that you take up your concerns with our new Interim Chair, Catherine, while I am recuperating. You should report back about your assignments at our next meeting on December 1 and perhaps on January 5 as well. Hopefully, then Gino will be able to incorporate the Community Goals into the New Open Space Plan that he is writing.

Best to You - and Again ,thanks for all your hard work. Best, Justine

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**APPLICABILITY OF ARTICLE 97  
TO  
OPEN SPACES**

The *2003-4 Dover Open Space and Recreation Plan* contained the goal to “determine the status of development restrictions on town owned lands.” While today’s summary is not absolutely conclusive, it would appear to be indicative of the applicability of Article 97 of the Massachusetts State Constitution to the question at hand.

To start with... Article 97 (see enclosed) was adopted in 1972 by the citizens of Massachusetts as the 97<sup>th</sup> Amendment to the state’s constitution. Its language is simple: “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.”

The General Court (aka the State Legislature) shall have the power to enact legislation necessary to protect such rights. Moreover, lands acquired for such purposes shall not be used for other purposes or otherwise disposed of except by a two-thirds vote of each branch (Senate and House of Representatives) of the State Legislature.

Over the ensuing months, the applicability of Article 97 to lands owned by the state and/or local governments was debated. In 1973, the Attorney General of Massachusetts wrote an opinion (see enclosed) that tried to clarify the applicability of Article 97 to various situations in which there were proposals to alter open spaces and/or natural resources. The gist of this opinion is that Article 97 applies to both lands owned by the state as well as to lands owned by the municipalities where the lands in question were dedicated to those specified uses and where either the use (ie., open space or natural resources) or the control (ie., ownership) of those lands was to be changed. In such cases, a two-thirds vote of the State Legislature is needed to approve the proposed changes to the land’s use and/or control. The two-thirds vote is also needed when lands are traded among state agencies.

Additionally in 1998, the Executive Office of Environmental Affairs (EOEA) made the ruling (see enclosed) that lands owned by EOEA may not be transferred unless there are “exceptional circumstances.” EOEA also requires municipalities to comply with its policy in order to receive EOEA funding. The purpose of this policy is to have “no net loss” associated with open space land.

In addition to Article 97, there is a long tradition of case laws in Massachusetts that governs the disposition of all types of lands (ie., municipal buildings, easements, railroad beds, etc.) owned by both the state and municipalities. This is the so called common

..... Article 97 continued.....

law known as “prior public use.” The 1973 opinion of the Attorney General required a two-thirds vote by the State Legislature to approve ownership changes and land use changes for other types of properties also.

Under the Article 97 Amendment and the “prior public use doctrine,” it is critical to establish the ownership and the restricted use (if any) of the land. In 1974, the Massachusetts Appeals Court (see enclosed) held in *Muir v. Leominster* that private land acquired by the Town of Leominster – without any restrictions on its land use – could be conveyed to a different entity without the approval of the State Legislature.

So, how do these laws and policies apply to open space lands in Dover? In our town, the State owns several large parcels, specifically the 112 acre Medfield State Forest land along the Charles River in Dover behind the Dover-Sherborn Regional Schools and the 182 acre Elm Bank near the Wellesley line. It would appear that both Article 97 and EOEA policy would govern any change of ownership and/or land use of these properties.

Regarding open space lands owned by municipal agencies such as the Dover Parks and Recreation Commission, it is important to establish how the land was acquired and whether or not its use was restricted. In the case of Caryl Park, George Chickering donated the land in 1917 through his will (see enclosed) “to the town of Dover to be used by the citizens of said Dover as a Public Park forever and to be known as Caryl Park.” Mr. Chickering’s will did not specify that the land be left in its natural state nor that the land be dedicated to specific uses. Various sections of Chapter 45 of the General Laws of Massachusetts (see enclosed) govern the activities of the Parks and Recreation Commissioners and would seem to authorize them to do whatever they want to do at Caryl Park, provided that the land remain as a park. Thus, Article 97 would only seem to apply if the land use changed (ie., it were no longer a park) or the ownership changed (ie., the Parks and Recreation Commission changed to ownership to another entity).

Another example in Dover would be the Wylde Woods property. In 2000, the Dover Town Meeting acquired Wylde Woods on Centre Street with the specific stipulation that it be used for conservation and be managed by the Dover Conservation Commission. Thus, again, Article 97 would only seem to apply if either the land use changed or the ownership interest changed.