



TOWN OF BOXFORD
Office of the Town Administrator
7A Spofford Road
Boxford, MA 01921

DATE: Thursday, January 19, 2023
TO: Select Board
FROM: Matt Coogan, Town Administrator
RE: **Designation of Colby Park and Use of CPA Funds**

On June 13, 2022, at a regularly scheduled meeting, the Select Board met with Ron Holmgren of the Friends of Colby Park to discuss future improvements to Colby Park at 158 Washington Street. Mr. Holmgren was also seeking support and guidance from the Select Board for the Friends to apply for CPA funds. There were four outcomes from that meeting:

1. **2022 Friends of Colby Park fundraising:** At the meeting, the Select Board emphasized that for any plans for Colby Park, specifically trees and plantings, there would also need to be identified a funded maintenance plan. The Board also mentioned the Town did not have the resources or capacity to take on an intensive park management plan. Mr. Holmgren mentioned that Friends of Colby Park were establishing a trust fund to be used for maintenance, and that the Friends intended to coordinate volunteer labor. At the time the Friends had mailed a fundraising appeal to all residents to fund the trust. Mr. Holmgren and the Board were to meet after the conclusion of the fundraising campaign, and the amount of funds raised would dictate how to proceed.
2. **Site plan and professional cost estimate:** The Board requested a site plan be produced with a cost estimate. Mr. Holmgren mentioned that the Friends were working with a new landscape architect.
3. **Designating Colby Park:** The Friends were unsuccessful in their 2022 CPA application to fund Colby Park improvements. One of the CPC's concerns was whether the use of 158 Washington was officially designated as a park. The Select Board has taken votes in the past supporting the Friends' plans, and voiced support for their efforts. The Select Board requested the Town Administrator confirm whether an official designation vote had been taken that would satisfy the CPC.
4. **Siting of future septic system:** The Select Board emphasized that any improvements to Colby Park would need to be in harmony with and accommodate the siting of a new septic system for Lincoln Hall.

In advance of Monday night's meeting, I requested Town Counsel to weigh in on items 3 and 4. In summary, in the opinion of Town Counsel, in order for CPA funds to be used for Colby Park, the use would have to be designated as a park by Town Meeting vote. However, such dedication would limit the use of the land and may restrict the ability to site a septic system in the future. Town Counsel's legal opinion:

While the Select Board may have care, custody, and control of certain Town-owned property, the property itself is held by the Town and Town Meeting action is necessary to dedicate property to a specific use. Property held for general municipal purpose may be used for a variety of purposes, including some uses consistent with parks and open space. However, in my opinion a Town Meeting vote dedicating property to park purposes would be necessary to satisfy the requirements of the Community Preservation Act with respect to expenditure of CPA funds for open space or recreational purposes.

Dedication to open space and park purposes is very limiting, meaning that conflicting uses would not be permissible. In my opinion, reservation of rights to use property for septic system purposes may be deemed inconsistent with the dedication of that property for open space and park purposes. To the extent that the Town would like to retain flexibility to locate a septic system on the property, or make other use of the property, the property should remain in the custody of the Select Board, held for general municipal purposes. If CPA funds are to be used for landscaping and other improvements at the property for open space purposes, the property would need to be dedicated as previously discussed, meaning that the property would be permanently restricted to open space and/or recreational use. If the property is so dedicated, the Town would, in our opinion, forgo the latitude to make the improvements that are being contemplated.

Property dedicated for park use is subject to the provisions of G.L. c. 45, sec. 7, which states as follows:

Section 7. Land taken for or held as a park under this chapter shall be forever kept open and maintained as a public park, and no building which exceeds six hundred square feet in area on the ground shall be erected on a common or park dedicated to the use of the public without leave of the general court; but, except in parks in Boston and in parks comprising less than one hundred acres in extent, structures for shelter, refreshment and other purposes may be erected of such material and in such places as, in the opinion of the fire commissioners, if any, do not endanger buildings beyond the limits of such park. The superior court shall have jurisdiction in equity, upon petition of not less than ten taxable inhabitants of the city or town in which such common or park is located, to restrain the erection of a building on a common or park in violation of this section.

Property dedicated to park purposes is thus protected by the statute for this use, as well as the provisions of Article 97 of the Articles to the Massachusetts Constitution, and the use of land so dedicated cannot be changed. Use of the property for septic system purposes, including installation and maintenance of the system, would likely not be deemed incidental to open space use and so may constitute a change in use from park purposes to septic system operation purposes. Courts have held that land held for park purposes may be improved and/or altered to enhance public use. The installation and operation of a septic system on the property would likely not be deemed permissible, in our opinion, as such use would not be beneficial to or in support of the open space use of the property.

Regardless of whether or not the Select Board chooses to pursue a Warrant Article at Town Meeting to designate the use of 158 Washington Street as Colby Park, it appears that CPA funds will not be a feasible funding source for improvements. Designation would most likely prohibit the use of the park in

the future for a septic system. Other funding sources could be used, including Free Cash or the Town's operating budget. However, use of these Town funds should be managed by the respective Town staff, and Board or Committee, and any improvements would need to be in compliance with public procurement law and prevailing wage.

The Select Board may want to consult with the PBC and the Recreation Committee on the future of Colby Park, including plans for improvements and funding sources. The [Permanent Building Committee By-Law](#) states the PBC "shall oversee and supervise the planning, design, construction, reconstruction, major alteration, renovation, enlargement, major maintenance, demolition, and removal of all Town buildings and recreation structures and playing fields and courts, including any significant installation, renovation or upgrade of service equipment and major systems". Through its [By-Law, the Recreation Committee](#) recommends development of recreational areas as needed and to be responsible for the care, maintenance and operation of such areas. The Open Space and Recreation Planning Committee is also active and in the process of updating the Town's Open Space and Recreation Plan.