

*Noted & filed*

## PARKS & HESSION

COUNSELLORS AT LAW

THIRTY STATE STREET

BOSTON

LAZARUS 1-390

TOWN CLERK  
BELMONT, MASS.  
PAID \$

BELMONT OFFICE  
385 CONCORD AVENUE  
IVANHOE 4-1824

EARLE C. PARKS  
FRANK C. HESSION  
  
HARRY E. CAVISTON  
HARRY J. MYERS, JR.  
OWEN P. MAHER  
THEODORE L. TILLOTSON

August 1, 1962

Board of Selectmen  
Town Hall  
Belmont, Massachusetts

Gentlemen:

One of your members asked me to check the grants to the Town from the late Henry O. Underwood to see what if any restrictions were placed upon the land at the corner of Concord Avenue, School and Cottage Streets.

I find that by deed dated November 8, 1899, (a photostatic copy of which is enclosed) recorded with the Middlesex South District Registry of Deeds in Book 2783, Page 515, Jennie C. Underwood conveyed 20,812 square feet of land on School Street to the Town of Belmont without any restrictions. There is frontage of 110.43 feet on School Street.

On September 6, 1911 the Land Court issued a Certificate of Title No. 3285 in the name of "Inhabitants of the Town of Belmont" ( a photostatic copy is enclosed for your files). This refers to 139,452 square feet of land with a frontage of 290.48 feet on Concord Avenue and 498.50 feet on Cottage Street. In this Certificate it is recited that the title is registered to restrictions requiring the Town to "...keep said land mainly as a public playground and maintain it suitably for the uses and purposes for which the former owner, Henry O. Underwood, shall forthwith improve and adapt it with the approval of the Board of Selectmen, or for public or other similar uses and purposes as may in the future be deemed more desirable by the Selectmen of the Town of Belmont.

The restrictions in this Certificate of Title are not subject to the 30-year rule since they are imposed for a public purpose. It would seem that the Selectmen have the right to determine what other "similar" use and purpose may be more desirable than using it for a playground. I would think that this would apply to any general public use and that with this reservation there is no need of legislative action to release the land for library parking or other public purposes as would be the case if the grant were purely for playground purposes.

Cordially yours,

*Earle C. Parks*  
Earle C. Parks

ECP:mh  
Enclosures



**To:** Board of Selectman  
**Fr:** David Kale, Town Administrator  
**Re:** Clark House/Underwood Playground Site  
**Dt:** December 24, 2013

Below is a response from George Hall with regard to the possible movement of the Clark House to the Underwood Park site. As you are aware, the Lease agreement with the Architectural Heritage Foundation (AHF) expires on February 6, 2014. In general, George advises that the placement of the Clark House be approved by Town Meeting and that recreational activities be part of the future activities of the Clark House. In addition, we would need clarification on the ownership of the House. Does the AHF plan on donating the House to the Town if a location were identified?

It is also my understanding that the Community Preservation Act Committee is not planning on entertaining any off-cycle applications.

We may need to have George meet with us in Executive Session to clarify any questions prior to February 6, 2014 since it appears there will be no funding in place by February 6<sup>th</sup> and the BOS will need to make a decision on the lease agreement.

George Hall writes:

"Based on my earlier opinion on this topic, I think the last clause in the deed allows the Town to make some changes to the uses for which Mr. Underwood originally improved the property. That clause allows the use of the property as a public playground "or for such other similar uses and purposes as may in the future be deemed more desirable by said Town of Belmont."

As I noted in my earlier emails, the deed is a bit vague as to who is authorized to make this determination on behalf of the Town (i.e., that another use might be more "desirable"). I think the best and safest interpretation of that clause is to require Town Meeting approval for any change of this magnitude.

I also think that the deed imposes some limitations on how drastic a change of use may be allowed, even *with* TM approval. Any new use or purpose has to be "similar" to the public playground uses for which the property was improved by Mr. Underwood. In my view, changing the property from a swimming pool to a tennis center would be fine; changing it from a swimming pool to a DPW maintenance facility would not. For that reason, I don't think that you could relocate the Clark House to the site for the purpose of subdividing the property and selling it as a private residence. It is possible to imagine, however, that a recreational property could include an historic house on it, open to the public, for some ancillary public use, without it running afoul of this restriction. Perhaps some kind of use that allows kids to engage with the Town's history in some fun way could be fairly characterized as a form of recreation. I would recommend some creative thinking along those lines, and I would be happy to respond to any particular ideas."

**Follow-up question:**

*Is this parcel considered open space/park land that might require an even exchange with a similar parcel? If the land use was approved by Town Meeting to locate the Thomas Clark House on it – is the action decided by the BOS and voted by Town Meeting final?*

**George Hall writes:**

**“The land is certainly Article 97 property if that’s what you mean (it would meet the definition of park land) – so if the idea was to obtain the approval of the Legislature to convey the land for residential purposes, there would indeed be pressure on the Town to comply with EOEEA’s Article 97 Land Disposition Policy, which does have a “no net loss” component that would require replacement of the land with other land to be newly devoted to park purposes.**

**The more significant obstacle to this is that it is that, in my view, a court would probably determine that the land is subject to a public trust created in Mr. Underwood’s original deed. (See my original email opinion on this point). This means that the Attorney General can enforce the terms of the trust, and the Town would need Probate Court approval – which it might not get, and almost certainly wouldn’t get if the AG opposed it – to sell a part of it. This limitation is *in addition to* the Article 97 limitations – it is not encompassed by it. The Town’s odds of obtaining that approval might be increased if it replaced the land with other suitable park land, but there are no guarantees.”**

# Transfer Certificate of Title.

No.

29-1  
241

24-10-A

From Transfer Registration Book Certificate No. , Originally Registered June 24, 1911 in Page for the South Registry District of Middlesex County.

This is to Certify that the Inhabitants of the Town of Belmont, a municipal corporation duly established and existing under the laws of the Commonwealth of Massachusetts

of in the County of Middlesex and Commonwealth of Massachusetts, married-to

is the owner in fee simple

of that certain parcel of land situate in

Belmont

in the County of Middlesex and said Commonwealth, bounded and described as follows:

Northeasterly by Concord Avenue two hundred and ninety and  $48\frac{1}{100}$  (290.48) feet;  
Southeasterly by Cottage Street four hundred ninety eight and  $50\frac{1}{100}$  (498.50) feet;  
Southwesterly by land now or formerly of Garrietta K. Drew and land now or formerly of Town of Belmont, 100 hundred thirty nine and  $36\frac{1}{100}$  (279.36) feet; and  
Northwesterly by lot "B" shown on plan hereinafter referred to four hundred eighty two and  $29\frac{1}{100}$  (482.20) feet.

Estimated to contain one hundred thirty nine thousand four hundred and fifty two (139,452) square feet of land.

Said parcel being lot "A" all the boundaries of which are determined by the Court to be located as shown on a plan approved by the Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County, in Registration Book 21 Page 509 with certificate number 5191.

Attorney of Secretary of Town of Belmont

And it is further certified that said land is under the operation and provisions of Chapter 128 of the Revised Laws, and that the title of said

*Inhabitants of the Town of Belmont*

to said land is registered under said Chapter, subject, however, to any of the encumbrances mentioned in Section thirty-eight of said Chapter, which may be subsisting, and subject also to the following restrictions, which shall be and forever remain in force thereon, to-wit: that said Town of Belmont will keep said land mainly as a public play ground and maintain it suitably for the use and purposes for which the former owner, Henry O. Underwood, shall furnish with improvements and adapt it with the approval of its Board of Selectmen, or for such other similar use and purposes as may in the future be deemed more desirable by said Town of Belmont.

WITNESS, CHARLES THORNTON DAVIS, Esquire, Judge of the Land Court, at Cambridge, in said County of Middlesex, the *sixth* day of *September* in the year nineteen hundred and *1914* at *8 o'clock* and *20* minutes in the *fore* noon.

Attest, with the Seal of said Court,

*Arthur*

Assistant Recorder.

MEMORANDA OF ENCUMBRANCES ON THE LAND DESCRIBED IN THIS CERTIFICATE. 3285				
KIND.	RUNNING IN FAVOR OF	TERMS.	DATE OF INSTRUMENT.	DATE OF REGISTRATION.
			YEAR. MONTH.	DAY. H. M. A.M. or P.M.
				SIGNATURE OF ASSISTANT RECORDER.
				DISCHARGE.

1

255

## \end{document}

Said parcel being lot 'A' all the boundaries of which are determined by the Court to be located as shown on a plan approved by the Court, filed in the Land Registration Office, a copy of which is filed in the Registry of Deeds for the South Registry District of Middlesex County in Registration Book Twenty-one (21) Page 599 with Certificate number 3991

Chlorides of Copper, of Cobalt and of Nickel. In the case of the chlorides of these metals, the chlorides are formed by the action of hydrochloric acid on the metal or its oxide. The chlorides are soluble in water, and the solutions are colored. The chlorides of copper, cobalt and nickel are also soluble in concentrated hydrochloric acid, forming complex chlorides. The chlorides of copper, cobalt and nickel are also soluble in concentrated hydrochloric acid, forming complex chlorides.