

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION  
NO. 2484CV0477 A**

**EMERALD NECKLACE CONSERVANCY, INC. & others<sup>1</sup>**

**vs.**

**CITY OF BOSTON & others<sup>2</sup>**

**FINDINGS OF FACT, RULINGS OF LAW, AND ORDER  
FOLLOWING BENCH TRIAL**

Plaintiffs Emerald Necklace Conservancy, Inc. ("Emerald Necklace") and twenty individuals (collectively, "Plaintiffs") brought this action against the City of Boston ("City"), the Trustees of the George Robert White Fund ("Trustees"), Boston Public Schools ("BPS"), the Boston Parks and Recreation Department ("BPRD") (the foregoing, collectively, "City Defendants"), Boston Unity Soccer Partners, LLC ("BUSP"), and Boston Unity Stadco, LLC ("Stadco") seeking to prevent the City from entering into a public-private partnership with BUSP and its affiliates<sup>3</sup> to renovate and then lease White Stadium and the area immediately surrounding it ("Project Site") in Franklin Park. The Second Amended Complaint sought a declaratory judgment that the City and Trustees violated the terms of the George Robert White Fund ("White Fund") (Counts I

<sup>1</sup> Beth Abelow; Jerrold Abelow; Jon Ball; Carla-Lisa Caliga; Rory Coffey; Jamie Cohen; John R. Cook; Louis Elisa; Derrick Evans; Marjorie Greville; Melissa Hamel; Pamela Jones; Arlene Mattison; Karen Mauney-Brodek; Jean McGuire; Beverly Merz; Daniel K. Moon; Rodney Singleton; Ben Taylor; Renee Welch

<sup>2</sup> Michelle Wu, as Mayor of the City of Boston and Trustee of the George Robert White Fund; Ruthzee Louijeune, as Boston City Council President and Trustee of the George Robert White Fund; Maureen Joyce, as Boston City Auditor and Trustee of the George Robert White Fund; James E. Rooney, as President and CEO of the Boston Chamber of Commerce and Trustee of the George Robert White Fund; Matthew McTygue, President of the Boston Bar Association and Trustee of the George Robert White Fund; Boston Public Schools; Boston Parks and Recreation Department; Boston Unity Soccer Partners, LLC; Boston Unity Stadco, LLC

<sup>3</sup> BUSP is a limited liability company that has been awarded a franchise for a professional women's soccer team in Boston by the National Women's Soccer League ("NWSL").

& II), a declaratory judgment that all Defendants violated Article 97 of the Massachusetts Constitution and the Public Lands Preservation Act (Counts III & IV), equitable relief (Count V), and preliminary and permanent injunctive relief (Count VI).

Upon the filing of the Complaint on February 20, 2024, the Plaintiffs sought a temporary restraining order and preliminary injunction prohibiting the City from entering into any agreement transferring control of any portion of the Project Site to BUSP and its affiliates, failing to comply with the Article 97 process, continuing with the Request for Quotations ("RFQ") process for bids for construction management of the City's portion of the Project, and failing to engage in Article 80 review before the Boston Planning and Development Agency. On March 22, 2024, the court (Ellis, J.) denied the Plaintiffs' motion for a temporary restraining order and preliminary injunction.

Prior to trial, the Defendants moved *in limine* to dismiss Counts I and II of the Second Amended Complaint, arguing that the Plaintiffs lacked standing to assert those claims. This court allowed that motion prior to trial, and Counts I and II were dismissed.<sup>4</sup> The remaining counts proceeded to trial on March 18, 2025. On March 19, 2025, the Plaintiffs filed the Third Amended Complaint, asserting additional claims for

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<sup>4</sup> While the Defendants' motion was styled as a motion *in limine*, it constituted a motion to dismiss for lack of standing. "The issue of standing is one of subject matter jurisdiction." *Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Court*, 448 Mass. 15, 21 (2006). "[A] party has the right to raise subject matter jurisdiction at any time." *ROPT Ltd. P'ship v. Katin*, 431 Mass. 601, 607 (2000).

"[T]he Attorney General is the only person apart from a trustee who, on behalf of the general public served by [a public charitable] trust's charitable mission, has standing to bring [an action to correct abuses in the administration of a charitable trust]." *DeGiacomo v. Quincy*, 476 Mass. 38, 46 (2016). "[A] private plaintiff also has standing to bring claims against a public charity where the plaintiff 'asserts an individual interest in the charitable organization distinct from that of the general public.'" *Id.*, quoting *Maffei v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 245 (2007), cert. denied, 552 U.S. 1099 (2008).

The Plaintiffs are neither the Attorney General nor trustees of the White Fund. The White Fund was established for the benefit of the general public, and the Plaintiffs do not have individual interests in the White Fund distinct from that of the general public. The Plaintiffs, therefore, do not have standing to bring Counts I and II regarding violation of the White Fund.

violations of G.L. c. 45, § 7 (Count VII) and G.L. c. 40, § 53 (Count VIII) against all Defendants.

## **BACKGROUND**

### **I. Establishment of Franklin Park**

In 1869, the Boston City Council created a committee to "consider what action should be taken by the city government to purchase and lay out a public park." In 1875, the Commonwealth passed the Parks Act, Chapter 185 of the Acts of 1875. Pursuant to the Parks Act, the City was authorized to acquire lands within the City for park purposes and to establish a parks commission to govern and regulate the City's parks. In 1883, the City acquired the land that became Franklin Park through eminent domain pursuant to the Parks Act. The land taken includes the property in dispute – the White Stadium parcel and the surrounding park land comprising Franklin Park. The City took 23 parcels of land by eminent domain in 1883. Included in the eminent domain takings was Lot 15,<sup>5</sup> which would later become known as Franklin Park.

Franklin Park was designed by prominent landscape architect Frederick Law Olmstead, who had previously designed New York City's Central Park. He began advising the Boston Parks Commission in 1878 and provided plans for numerous parks

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<sup>5</sup> Lot 15 was described as:

A parcel of land belonging to George D. Lord, Trustee, bounded and described as follows: beginning on the northeasterly line of Walnut St. at land hereinbefore described as taken from Samuel S. Sawyer, and running northerly on said Walnut Street to land hereinbefore described as taken from the Institution for Savings in Newburyport and its Vicinity; thence turning southeasterly on said land described as taken from said Institution for Savings to said land described as taken from Samuel E. Sawyer; thence running southwesterly on said last mentioned land to the point to beginning. Containing 1217763 sq. ft. more or less and being the parcel number 15 on a plan of Proposed West Roxbury Park dated 1880 on file at the office of said Commissioners.

including Jamaica Park, the Arboretum, and Franklin Park. Franklin Park is Boston's largest park and is one in a chain of nine parks known as the Emerald Necklace. It is located near the neighborhoods of Jamaica Plain, Dorchester, Roxbury, and Mattapan.

Franklin Park Playstead, built between 1887 and 1888, is an area of approximately forty acres on the northern side of Franklin Park. Olmstead intended this particular area "to be used for the athletic recreation and education of the city's school boys, for occasional civil ceremonies and exhibition, and for any purpose likely to draw spectators in crowds." The Playstead was the first area of Franklin Park to be completed, and it opened to the public on June 12, 1889.

## **II. The George Robert White Charitable Trust**

George Robert White ("White"), a prominent Boston businessman, died on January 2, 1922. The White Fund was established by Article Fourteenth of the Will of George Robert White ("Will"). The relevant parts of Article Fourteenth read as follows:

... I do now carry out by immediate gift my public charitable purpose which in previous wills I have provided for in remainder, and I do now give all the rest and residue of my property of every nature to the City of Boston, the same to be held as a permanent charitable trust fund to be known as the George Robert White Fund, and the net income only to be used for creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston. It is my intention that no part of said income, however, shall be used for a religious, political, educational or any purpose which it shall be the duty of the City in the ordinary course of events to provide.

The control and management of said Fund and the disbursement of the income shall be in the hands of a board of five trustees to consist of the Mayor, who shall be its chairman, the President of the City Council, the City Auditor, the President of the Chamber of Commerce and the president of the Bar Association of the city of Boston . . . As this is a public charitable gift to the City of Boston, it is my intention that the City shall at all times be officially represented by a majority of the board of trustees charged with its management.

The Will was filed with the Probate Court on February 2, 1922, and allowed by the court on March 2, 1922.

In March 1922, by order of the City Council, approved by the Mayor, the City accepted the devise and bequest under Article Fourteenth of the Will, in accordance with the imposed terms and conditions.

On August 16, 1947, the Trustees of the White Fund selected a portion of the Playstead to be the site of a new stadium for use by Boston's schoolchildren. On October 10, 1947, the Trustees voted to request that the City transfer to the City of Boston-George Robert White Fund, a 14-acre parcel of land in the Playstead ("Stadium Parcel") for purposes of the establishment of a stadium, pursuant to the Acts of 1947, c. 542, § 1.<sup>6</sup> On October 20, 1947, the Mayor asked the City Council to approve the sale of the parcel for purposes of constructing a schoolboy stadium at the site to be named the "George Robert White Fund Memorial Stadium." On October 27, 1947, the City Council authorized the Mayor to transfer the Stadium Parcel for purposes of constructing the stadium.

On November 14, 1947, the City deeded the Stadium Parcel to the White Fund in consideration of the sum of \$20,000. The deed recited that the transfer was "for the purpose with the establishment of the stadium on said land." The land conveyed to the White Fund is shown on the plan dated October 16, 1947, entitled "Plan showing land to

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<sup>6</sup> The Acts of 1947, c. 542, § 1, provide, in relevant part,

any land heretofore or hereafter acquired by the city of Boston by tax title foreclosure and any land including park land, heretofore or hereafter acquired in fee by [the City of Boston] by eminent domain or by purchase, gift, devise or otherwise may, if the board of trustees of the fund established by article fourteenth of [the Will] and known as the [White Fund] so re-quests and the board or officer having charge of said land so recommends, be transferred for the fair cash value thereof by vote of the city council of said city, subject to the provisions of its charter, to said fund to be held hereafter for the purposes of said article fourteenth . . . .

be transferred by City of Boston Parks Department, to City of Boston-George Robert White Fund which plan was recorded at the Suffolk registry of deeds.”

In or around October 1947, the Trustees voted to construct the stadium at an initial cost of \$300,000. A 10,000-seat stadium was constructed on the property using money from the White Fund. The stadium has two sets of grandstands (East and West) and is open at both ends insofar as there are no structures at the ends, but the stadium is fenced in so that the public cannot access the stadium when it is closed. The construction of White Stadium was completed in May 1949.

On June 7, 1949, the Trustees unanimously voted that the Stadium “be turned over to the City – according to the terms of the Will – and that the Trustees favor an announcement by His Honor the Mayor to the Public that the School Department would have full charge of the operation, care and maintenance of the new Schoolboy Stadium in Franklin Park.” The Mayor approved the vote and authorized White Stadium being turned over to the Boston School Department.

On or about April 10, 1950, the General Court of the Commonwealth of Massachusetts passed and adopted Chapter 291 of the Acts of 1950, entitled “An Act Relative to the George Robert White Fund Schoolboy Stadium in the City of Boston.”

The 1950 Act states as follows:

So long as George Robert White Fund[']s Schoolboy Stadium shall remain in the custody and control of the school committee of [Boston] said stadium, together with the estate upon which it stands, shall be deemed to be a school building and yard, and should be repaired, altered, improved and furnished in the same manner as a school building and yard out of funds appropriated under paragraph b of section two of chapter two hundred and twenty-four of the acts of nineteen hundred and thirty-six, and shall be cared for and maintained in like manner out of funds appropriated under paragraph c of said section 2.

### **III. Use of White Stadium**

#### **a. Historically**

BPS has controlled White Stadium since 1949. White Stadium has been used for numerous athletic events, including football, soccer, cross country, cheerleading, track and field, and Special Olympics practices and competitions. BPS has continuously used the Stadium Parcel for athletic purposes. Boston Latin Academy, Boston Latin School, Burke High School, and West Roxbury High School have all used White Stadium for athletic games for various lengths of time.

BPS has annually hosted high school graduation ceremonies at White Stadium. Youth camps are held there in the summer. White Stadium is also the home of various music, cultural, community and arts festivals, including the Caribbean kids' festival, the Puerto Rican festival, the Dominican festival, and the Boston Arts & Music Festival. The Boston Fire Department uses the field for a teen academy in the summer.

The public has access to portions of White Stadium when it is not being used for specific events. The track and grandstands are open to members of the public from 7:00 a.m. to 4:00 p.m. Monday through Friday. During that time, the public is permitted to use the track and traverse the bleachers of the West Grandstand. The public is not able to access the field or the areas inside the grandstands. Outside these hours, the Stadium is locked and intended to be inaccessible to the public. Testimony, however, suggests that members of the public often use the Stadium outside the official hours of use.

Members of the public often use portions outside White Stadium, but within the Stadium Parcel, for walking, exercising, or just enjoying the outdoors. This use includes

the fenced area to the south of the Stadium. It further includes basketball and tennis courts, which are located outside the Stadium but within the Stadium Parcel.

The BPS Athletics Department maintains offices on the second floor of the West Grandstand. The public does not have access to that area. The areas inside the East Grandstand are virtually unusable because of damage caused by a long-ago fire. Presently, use of the field is limited by its current condition to approximately 250 hours per year. Although White Stadium has bathroom facilities and water fountains, they are inoperable in the winter when the water must be turned off. The poured concrete foundation of the grandstands has structural deficiencies, such as expansion joint failure, cracking, and deterioration. The lighting, plumbing, and HVAC systems are at the end of their useful life. Water damage is visible from seepage through the stadium floors. Further, White Stadium does not comply with current building codes, fire codes, or the Americans with Disabilities Act.

There is simply no doubt that the City and BPS have failed in their responsibility to maintain White Stadium. It has been seriously dilapidated and in need of significant repairs for decades. Generations of BPS students have been short-changed by the willful neglect that has affected White Stadium.

**b. After Project Completion**

Once the Project is completed, the City and BUSP will share use of White Stadium. City and community events historically hosted in or around White Stadium will continue to be held there. On December 23, 2024, the City and BUSP executed a final Lease Agreement ("Lease") and Stadium Usage Agreement ("SUA"). The SUA provides that major City events have "absolute priority" over BUSP games. Further,



City and community events and BPS games and practices have scheduling priority over BUSP practices.

The interior of the East Grandstand will be used exclusively by BPS. That space will include a strength and conditioning facility, a sports medicine facility, offices for the BPS Athletics Department, study lounges for students, a community room, and a catering kitchen.<sup>7</sup> The community room, which will be able to hold up to 100 people, and catering kitchen will be available for use by the public. Additionally, the West Grandstand will include a storage facility for BPS, public restrooms available to users of White Stadium and Franklin Park, and a press box that BPS students will be able to utilize.

Pursuant to the SUA, the public will enjoy enhanced use of White Stadium. Aside from BUSP game days and BPS games and practices, the track, public restrooms, stairs and seating of both grandstands, and area to the south of the Stadium will be available for public use every day of the week from 6:00 a.m. to 9:00 p.m. White Stadium will be available for use by BPS students and/or the public 365 days per year.

#### **IV. Open Space and Recreation Plans**

The City began preparing and publishing Open Space and Recreation Plans ("OSPs"), which provide a comprehensive overview and analysis of the City's park system, in the 1960s. Initially, OSPs were prepared every five years and, later, every seven years. The overwhelming reason that the City prepares OSPs is to ensure that it is eligible for certain state grants, such as the Land and Water Conservation Fund ("LWCF") and Renovations for Communities Grants. Based upon the evidence

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<sup>7</sup> BPS students do not currently have access to any of these types of facilities.

presented, I do not believe OSPs would be prepared by the City but for the opportunity to obtain funding.

OSP's are initially prepared by City personnel. They are then reviewed and approved by the Division of Conservation Services ("DCS"), a unit which reports to the Executive Secretary of Environmental Affairs ("EEA"). Once approved, OSP's are published. OSP's were published beginning in the 1970s with the most recent covering the time period 2023-2029.

Beginning with the 2002 OSP, the City was required by the DCS, as a condition of granting funding, to include a detailed inventory of all property located within Boston considered to be open and recreation space. This is called the Open Space Inventory.

Various OSP's identified White Stadium as protected Article 97 land. Testimony by Liza Meyer, Interim Commissioner of the BPRD, and Exhibit 116, a deposition transcript of Aldo Ghirin, a BPRD employee, are relevant to this issue. Ghirin bore responsibility for preparing, reviewing, and editing OSP's. He prepared, reviewed, and edited OSP's published in 2002, 2008, and 2015. Ghirin identified White Stadium and the remainder of the Stadium Parcel as protected space under Article 97.

Ghirin acknowledged at his deposition that he did not review Chapter 291 of the Acts of 1950 or any of the related history of the Stadium Parcel prior to identifying it as protected under Article 97. Ghirin reviewed those relevant documents for the first time in 2020 and was then unclear as to whether the land should have been identified as protected by Article 97. Each of the OSP's prepared by Ghirin contains a disclaimer that it should not be relied upon without further investigation and inquiry.

Liza Meyer's trial testimony essentially corroborated Ghirin's deposition testimony. I fully credit their testimony on this topic and, as a result, find the OSPs to have limited persuasive value on the issue of whether the land in question is protected land under Article 97.

Meyer testified that Boston received at least two grants through the LWCF. The City obtained a grant through the LWCF covering the period from 1978 through 1983, in or around the amount of \$200,000, for work within Franklin Park. Additionally, the City obtained another grant through LWCF for "Phase II" Franklin Park renovations. That grant covered the time period from September 30, 1983, through December 31, 1986 and was in or around the amount of \$250,000. Meyer was definitive that the grant funds were used for the betterment of Franklin Park, not the Stadium Parcel. I specifically credit that testimony. An LWCF Boundary Map depicting the portion of Franklin Park protected by the LWCF includes all areas of Franklin Park, except the Stadium Parcel and the areas currently occupied by Shattuck Hospital and Franklin Park Zoo.

#### **V. MassMapper**

The Commonwealth's Executive Office of Technology and Security Services, through MassGIS,<sup>8</sup> publishes an interactive mapping tool available to the public called MassMapper. MassMapper has a data layer that shows open space that is protected by Article 97. MassMapper indicates that the Stadium Parcel is not protected under Article 97.

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<sup>8</sup> MassGIS is the Commonwealth's Bureau of Geographic Information.

Throughout these proceedings, each side has offered evidence and opined about the benefits and detriments of the Project. I specifically decline to make any factual findings about those issues. They are simply not relevant to the case.

There was evidence presented during the trial that BPRD maintained some portions of the Stadium Parcel outside of the Stadium walls and the fenced area to the south and that BPS maintained the inside of the Stadium. I find this to be a mere convenience and pooling of resources between departments and not dispositive of control over any particular area.

## RULINGS OF LAW

### I. Article 97

The outcome of this case hinges on whether the Stadium Parcel is protected by Article 97. According to Article 97 of the Amendments to the Massachusetts Constitution, which was ratified by voters in 1972, a two-thirds vote of both houses of the Legislature is required to allow land acquired or designated for a public purpose to be used for other purposes.

Article 97 provides, in pertinent part, that

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.**

...

Lands and easements **taken or acquired for such purposes** shall not be used for other purposes or otherwise disposed of except by laws enacted by a two-thirds vote . . . of each branch of the [legislature].

(emphasis added).

"[T]he language of Article 97 is 'relatively imprecise' and [ ] its provisions must be interpreted 'in light of the practical consequences that would result from . . . an expansive application, as well as the ability of a narrower interpretation to serve adequately the stated goals of art. 97.'" *Smith v. Westfield*, 478 Mass. 49, 56 (2017), quoting *Mahajan v. Department of Env't Prot.*, 464 Mass. 604, 614-615 (2013).

Although Article 97 became law in 1972, the Supreme Judicial Court has "made clear that art. 97 applie[s] to all property that was taken or acquired for art. 97 purposes, including property taken or acquired before its ratification in 1972." *Id.* at 62. "[L]and may be protected by art. 97 where it was neither taken by eminent domain nor acquired for any purpose set forth in art. 97 provided that, after the taking or acquisition, it 'was designated for those purposes in a manner sufficient to invoke the protection of art. 97.'" *Id.* at 63, quoting *Mahajan*, 464 Mass. at 615. "[L]and is not taken for art. 97 purposes simply because it 'incidentally' promotes conservation, or because it 'simply displays some attributes of art. 97 land generally,' or because 'a comprehensive urban renewal plan may identify, among other objectives, some objectives that are consistent with art. 97 purposes.'" *Id.* at 57, quoting *Mahajan*, 464 Mass. at 613-614, 618.

Article 97 applies to property protected under two common law doctrines: the public dedication doctrine and the doctrine of prior public use. *Id.* at 58, 62. In fact, "the spirit of art. 97 is derived from" those common law doctrines, which should be applied under Article 97 to "inform [the court's] analysis." *Mahajan*, 464 Mass. at 616.

The "public dedication doctrine" applies when privately owned land has areas dedicated to public use, such as roadways subject to the easement of public ways. *Smith*, 478 Mass. at 58-59. Similarly, "[a] city or town that owns land in its proprietary

capacity and uses the land for a park may also dedicate the parkland to the use of the public." *Id.* at 59. In this circumstance, "[t]he general public for whose benefit a use in the land was established by an owner obtains an interest in the land in the nature of an easement." *Id.*, citing *Lowell v. Boston*, 322 Mass. 709, 730 (1948).

The related doctrine of "prior public use" dictates that "public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion." *Id.* at 60, quoting *Robbins v. Department of Pub. Works*, 355 Mass. 328, 330 (1969). The doctrine "is applied more 'stringently' where a public agency or municipality seeks to encroach upon a park." *Id.* at 61, quoting *Robbins*, 355 Mass. at 330. "[P]arkland protected by art. 97 includes land dedicated by municipalities as public parks that, under the prior public use doctrine, cannot be sold or devoted to another public use without plain and explicit legislative authority." *Id.* at 62.

The key question in this case is whether the Stadium Parcel was permanently dedicated by the City as a public park or whether the City has evinced an intent to use the Stadium Parcel as school property. "Under our common law, land is dedicated to the public as a public park when the landowner's intent to do so is clear and unequivocal, and when the public accepts such use by actually using the land as a public park." *Id.* at 63. Thus, a claim under the public dedication doctrine has two elements: (1) clear and unequivocal intent of the landowner to dedicate the land for public use; and (2) acceptance by the public to use the land for the purpose so dedicated. *Id.*

"The clear and unequivocal intent to dedicate public land as a public park must be more than simply an intent to use public land as a park temporarily or until a better use has emerged or ripened." *Id.* "[T]he intent must be to use the land permanently as a public park, because the consequence of a dedication is that '[t]he general public for whose benefit a use in the land was established . . . obtains an interest in the land in the nature of an easement' and 'upon completion of the dedication it becomes irrevocable.'" *Id.* (internal citation omitted). Clear and unequivocal intent may be demonstrated in a number of ways. "The recording of a deed or a conservation restriction is one way of manifesting such intent but it is not the only way." *Id.*

Use of the land by the public "is competent, and often important, as bearing on the question of dedication, when that is in dispute, for if a man stands by, seeing the public use a way, permits it, and says nothing, it is very strong evidence to show an intention to dedicate." *Hayden v. Stone*, 112 Mass. 346, 350 (1873). Dedication "also may be manifested by the owner's acts from which such an intention can be inferred." *Attorney Gen. v. Onset Bay Grove Ass'n*, 221 Mass. 342, 348 (1915).

In *Smith*, for example, where there was no recorded restriction, a dedication was found based on the 1979 "acceptance by the city of Federal conservation funds under the [Land and Water Conservation Fund Act of 1965] to rehabilitate the playground with the statutory proviso that, by doing so, the city surrendered all ability to convert the playground to a use other than public outdoor recreation without the approval of the Secretary [of the Interior]." 478 Mass. at 64.

There is not enough evidence to support the proposition that, at any point in time, the City expressed a deliberate, unequivocal and decisive intent to permanently place

the Stadium Parcel under the protection of Article 97. There is no deed or conservation restriction which manifests a clear and unequivocal intent to dedicate the Stadium Parcel as a public park. There is no evidence that the City accepted federal conservation funds to rehabilitate White Stadium and/or the Stadium Parcel. See *Smith*, 478 Mass. at 64. There is no evidence of a clear and unequivocal intent by the Boston Redevelopment Authority to make White Stadium permanently a public park. See *Mahajan*, 464 Mass. at 618-619. There is no evidence of a City Council vote to dedicate White Stadium permanently as conservation land or to transfer White Stadium to the conservation commission. See *Selectmen of Hanson v. Lindsay*, 444 Mass. 502, 506-508 (2005).

Chapter 542 of 1947 extinguished any prior dedication of the Stadium Parcel as parkland. Moreover, it allowed the land to be held for the purposes that it was originally bequeathed to the City in the Will. Chapter 291 of the Acts of 1950 further entrenches the fact that the land was no longer to be considered parkland. The General Court, albeit presumably by a majority and not a two-thirds vote (which is legally sufficient for purposes here given that Article 97 was not enacted until 1972), voted that the land was to be a school building and yard.

Notwithstanding the testimony from nearby residents, there is simply inadequate evidence that the everyday use of the property evinces an unequivocal intent to dedicate the property as public parkland. I conclude, therefore, that the Stadium Parcel is not protected by Article 97.



**II. G.L. c. 45, § 7**

Pursuant to G.L. c. 45, § 7,

Land taken for or held as a park . . . shall forever be 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 . . .

In addition to renovating White Stadium, the Project calls for the construction of an 8,100 square-foot retail building outside the Stadium, but within the Stadium Parcel. As previously discussed, the Stadium Parcel is not parkland "dedicated to the use of the public." Therefore, the Project does not run afoul of G.L. c. 45, § 7.

**III. G.L. c. 40, § 53**

General Laws c. 40, § 53, provides a mechanism for taxpayers to enforce laws relating to the expenditure of tax money by the local government. *LeClair v. Norwell*, 430 Mass. 328, 332 (1999). The Defendants do not dispute that, among the Individual Plaintiffs, are ten taxpaying residents of the City. The statute provides that

If a town, regional school district, or a district . . . or any of its officers or agents are about to raise or expend money or incur obligations purporting to bind said town, regional school district, or district for any purpose or object or in any manner other than that for and in which such town, regional school district, or district has the legal and constitutional right and power to raise or expend money or incur obligations, the [ ] superior court may, upon petition of not less than ten taxable inhabitants of the town, or not less than ten taxable inhabitants of any town in the regional school district . . . determine the same in equity, and may, before the final determination of the cause, restrain the unlawful exercise or abuse of such corporate power.

G.L. c. 40, § 53.

"[A]n action by ten taxpayers under G.L. c. 40, § 53, is subject to laches . . . and must be brought before obligations are incurred by a municipality." *Siedeman v. Newton*, 452 Mass. 472, 480 n.13 (2008). For laches to apply, there must be a showing

that the Plaintiffs had knowledge of the alleged issue in dispute. See *G.E.B. v. S.R.W.*, 422 Mass. 158, 166 (1996).

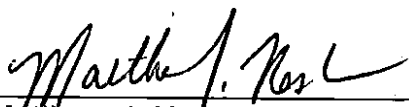
The City and BUSP executed the Lease and SUA on December 23, 2024. The terms of a commercial lease to which a tenant has agreed are binding. See *Worcester-Tatnuck Square CVS, Inc. v. Kaplan*, 33 Mass. App. Ct. 499, 503-506 (1992).

Accordingly, the City has already incurred obligations. The Plaintiffs had sufficient knowledge of the Project, as evidenced by their filing of this action on February 20, 2024, well in advance of the City and BUSP executing the Lease and SUA.

Consequently, laches applies to bar the Plaintiffs' claim under G.L. c. 40, § 53.<sup>9</sup>

#### ORDER

For the foregoing reasons, judgment shall enter for the Defendants on all remaining counts. The Court hereby declares that the Stadium Parcel is not subject to Article 97, and, therefore, the Defendants did not violate Article 97 and/or the Public Lands Preservation Act (Counts III & IV); the Plaintiffs are not entitled to equitable or injunctive relief (Counts V & VI); and the Project does not violate either G.L. c. 45, § 7, or G.L. c. 40, § 53 (Counts VII & VIII).

  
Matthew J. Nestor  
Justice of the Superior Court

Dated: April 2, 2025

<sup>9</sup> Even if the Plaintiffs' claim was not barred by the doctrine of laches, the Plaintiffs contend that the City Defendants do not have the legal or constitutional authority to raise and expend funds and/or incur obligations to complete the Project pursuant to, among other uncited provisions and statutes, Article 97; G.L. c. 3, § 5A; G.L. c. 214, § 7A, and G.L. c. 45, § 7. As discussed, *supra*, the Stadium Parcel is not subject to Article 97. General Laws c. 3, § 5A, concerns land and interests subject to Article 97 and is, therefore, inapplicable. As discussed in Section II, the Project does not run afoul of G.L. c. 45, § 7. Finally, G.L. c. 214, § 7A, requires a plaintiff asserting a claim pursuant to that statute to provide notice to the opposing party by certified mail "at least twenty-one days prior to the commencement of such action." The Third Amended Complaint was not filed until March 19, 2025, after the trial was underway, and, therefore, G.L. c. 214, § 7A, cannot serve as a basis for Count VIII.