

ANALYSING DEEDS FOR ARTICLE 97 PROTECTIONS

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EXAMPLES OF DEEDS – ARTICLE 97 OR NOT?

1. Language:

“Grant to the Inhabitants of the Town of Upper Croydon.....the above described property shall be used for the purposes authorized by Section 8-C, Chapter 40 of the General Laws as now in force and as it may hereafter be amended and other Massachusetts statutes relating to conservation, including the protection and development of natural resources of the Town of Upper Croydon.”

Status:

Property deeded to the Inhabitants without any further statement of custody is deemed to be under the custody and control of the Board of Selectmen. An Acceptance of Deed by the Board of Selectmen was recorded in Book 1913, Page 169. The Acceptance does not state the purposes for which the land is to be held. So far, we have no evidence that the Acceptance was approved by Town Meeting.

Cure:

Vote of Town Meeting authorizing the Board of Selectmen to accept the property for conservation purposes should be obtained and recorded. The Registry should be asked to make a marginal reference back to the recorded Acceptance of Deed. The Board of Selectmen could then vote to place the property under the management of the Conservation Commission.

2. Language:

“Grants to the Town of Upper Croydon for Conservation Purposes”

Status:

Deeds to a municipality without mention of a specific board or commission are deemed to convey the property to the control and custody of the Board of Selectmen. Unlike the first deed, no acceptance by the Board of Selectmen was recorded with the deed, nor is there evidence of a Town Meeting vote approving the acceptance. While conservation commissions may accept property without a Town Meeting vote, boards of selectmen may not. Without a vote and

recorded acceptance, there is some question as to whether the property is actually owned by a municipality.

Cure:

Acceptance by the Conservation Commission under c. 40 §8C, with approval by the Board of Selectmen to be recorded with marginal reference to the Deed. No Town Meeting vote is required.

3. Language:

“Grants to the Inhabitants of the Town of Upper Croydon....for public use”

Status:

Because the deed omits any statement as to control of the property, custody would be in the Board of Selectmen. However, no acceptance of the deed has been recorded. The term “public use” could be any public purpose, including but not limited to conservation. The parcel conveyed by this deed is not in conservation. There is no evidence that approval of the acceptance was obtained from Town Meeting or that custody was accepted by the Board of Selectmen. As stated above, without these approvals, there is concern that the Town may not have perfected its title to the parcel.

Cure: If the Town determines that conservation purposes are the best use, the Conservation Commission should accept the parcel under c. 40 §8C, with the approval of the Board of Selectmen, and the Acceptance should be recorded with marginal reference to the Deed. If the parcel is designated for general municipal purposes or active recreation, a vote of Town Meeting would be required.

4. Language:

“Grant to the Inhabitants of the Town of Upper Croydon under authority and control of the Town of Upper Croydon Conservation Commission”

Status:

This deed does convey the property to the Conservation Commission and, while the deed does not state that the conveyance is for conservation purposes under c. 40 §8C, the Conservation Commission cannot legally hold land for any other purpose.

Cure:

Acceptance by the Conservation Commission under c. 40 §8C, with the approval of the Board of Selectmen to be recorded with marginal reference to the Deed.

5. Language:

“Grants to the Inhabitants of The Town of Upper Croydon. Said real property to be managed and controlled by the Conservation Commission of the Town of Upper Croydon. It is understood and agreed that the Town may use the premises for purposes other than conservation”

Status:

Status:

Land Court might think that permission to use for other purposes would defeat protection of Article 97. However, the vote filed with the Deed recites the fact that the listed properties were being purchased or gifted to the Town for conservation purposes and that funds authorized for the purchase would be expended by the Conservation Commission. The Certificate of Title issued to the Town states that the described parcels are managed and controlled by the Conservation Commission. The Conservation Commission cannot devote land under its custody to any purpose other than conservation. Any attempt to use the land for other purposes would require a 2/3rds vote of Town Meeting and a 2/3rds vote of the General Court.

6. Language:

“Order of Taking by the Board of Selectmen of the Town of Upper Croydon for the Preservation of Certain Land in Upper Croydon for Conservation, Open Space, Passive Recreation and Other Public Purposes”

Status:

With such designation, the property is protected under Article 97.

7. Language:

“Grant and dedicate to the Inhabitants of the Town of Upper Croydon...but nevertheless in Trust upon the following terms and conditions: 1. Such Town shall be Trustee under this trust. 2. The Conservation Commission of the Town of Upper Croydon shall manage and control the property conveyed to this public charitable trust....”

Status:

These deeds convey property to the Town subject to a perpetual charitable trust for conservation purposes under c. 40 Section 8C. The Selectmen are designated as the Trustees but control and custody are placed with the Conservation Commission. The use of this language establishes a public charitable trust which provides additional protection. A public charitable trust creates a contractual obligation on the Town to devote the land solely to conservation purposes. Conversion of the property would require Article 97 legislative approval in addition to a *cy pres* petition to the Attorney General.

Vote to Cure

Vote of Board of Selectmen (current custodian):

The Board of Selectmen hereby vote that the properties described below, which are held by the Town for general municipal purposes under G.L. Ch. 40 sec. 14, are no longer needed for those purposes, and that said an article shall be submitted to Town Meeting requesting the transfer of these parcels to the care, custody and management control of the Conservation Commission for conservation and passive recreation purposes pursuant to G.L. Ch. 40, sec. 8C.

<u>Tax Map/Lot</u>	<u>Approx. Location</u>	<u>Acreage</u>	<u>Deed Book/Page</u>	<u>Comments</u>
Map 31, Lot 15	Olde Owl Pond Rd.	28.6	Bk 3012 Pg 44	Abuts conservation
Map 31, Lot 34	Bakers Pond Rd.	1.66	Bk 3012 Pg 44	Zone 2 (water supply)
Map 31, Lot 33	Bakers Pond Rd.	14.1	Bk 3012 Pg 44	Zone 2 (water supply)
Map 31, Lot 61	Bakers Pond Rd.	5.3	Bk 3012 Pg 44	Zone 2 (water supply)
Map 38, Lot 173-1	Pine Pond	0.95	Bk 5248 Pg 50	Zone 2 (water supply)
Map 39, Lot 28-3	Archies Cartway	0.6	Land Ct. Ctf. 119740	Zone 2 (watersupply)
Map 22, Lot 2	Main St. Rear	0.6	Bk 14208 Pg 63	Abuts conservation
Map 22, Lot 3	Main St. Rear	1.5	Bk 14208 Pg 63	Abuts conservation
Map 22, Lot 48	A.P. Newcomb Rd.	1.2	Bk 14208 Pg 63	Contains wetland
Map 35, Lot 70	Great Fields Rd. Rear	0.91	Bk 6829 Pg 309	Contains wetland
Map 10, Lot 12	Namskaket Marsh	27.8	Bk 1913 Pg 166	Salt marsh
Map 10, Lot 14	Namskaket Marsh	138.4	Bk 1913 Pg 166	Salt marsh
Map 50, Lot 10	West Gate Rd. Rear	3.9	Bk 5044 Pg 170	Zone 2 (water supply)
Map 50, Lot 12	East Gate Rd. Rear	7.9	Bk 2099 Pg 103	Zone 2 (water supply)
Map 50, Lot 13	East Gate Rd. Rear	1.35	Bk 2099 Pg 104	Zone 2 (water supply)
Map 50, Lot 14	East Gate Rd. Rear	0.6	Bk 2099 Pg 105	Zone 2 (water supply)
Map 50, Lot 16	Punkhorn Rd.	2.7	Bk 11355 Pg 102	Zone 2 (water supply)
Map 50, Lot 18	East Gate Rd.	5.4	Bk 5444 Pg 279	Zone 2 (water supply)

Map 50, Lot 2	West Gate Rd.	18.4	Bk 3356 Pg 16	Zone 2 (water supply)
Map 50, Lot 60	West Gate Rd.	27.9	Bk 4765 Pg 256	Zone 2 (water supply)
Map 51, Lot 28	Slough Rd. Rear	5.7	Bk 5306 Pg 316	Zone 2 (water supply)

Draft Warrant Article

Draft Article for acceptance of parcels by the Board of Selectmen, placement of a conservation restriction on the parcels, and transfer of parcels from the Town of Upper Croydon Board of Selectmen to the Conservation Commission.

LAND CONSERVATION & TRANSFER OF CUSTODY

ARTICLE NO. ___:

To see if the Town will vote to authorize the Board of Selectmen to accept the following parcels for general municipal purposes:

<u>Tax Map/Lot</u>	<u>Approx. Location</u>	<u>Acreage</u>	<u>Deed Book/Page</u>	
Map 10, Lot 12	Namskaket Marsh	27.8	Bk 1913 Pg 166	Salt marsh
Map 10, Lot 14	Namskaket Marsh	138.4	Bk 1913 Pg 166	Salt marsh
Map 50, Lot 10	West Gate Rd. Rear	3.9	Bk 5044 Pg 170	Zone 2 (water supply)
Map 50, Lot 18	East Gate Rd.	5.4	Bk 5444 Pg 279	Zone 2 (water supply)
Map 50, Lot 2	West Gate Rd.	18.4	Bk 3356 Pg 16	Zone 2 (water supply)
Map 50, Lot 60	West Gate Rd.	27.9	Bk 4765 Pg 256	Zone 2 (water supply)
Map 51, Lot 28	Slough Rd. Rear	5.7	Bk 5306 Pg 316	Zone 2 (water supply)

and further to authorize the Board of Selectmen to grant a perpetual conservation restriction pursuant to G.L. c. 184 Section 31 to the Upper Croydon Conservation Trust

and to see if the Town will vote to transfer the care, custody, control and management of the following parcels from the Board of Selectmen for general municipal purposes to the Conservation Commission for conservation and passive recreation purposes under G.L. c. 40 Section 8C

<u>Tax Map/Lot</u>	<u>Approx. Location</u>	<u>Acreage</u>	<u>Deed Book/Page</u>	<u>Comments</u>
Map 31, Lot 15	Olde Owl Pond Rd. conservation land	28.6	Bk 3012 Pg 44	Adjacent to
Map 31, Lot 34	Bakers Pond Rd.	1.66	Bk 3012 Pg 44	Zone 2 (water supply)

Map 31, Lot 33	Bakers Pond Rd.	14.1	Bk 3012 Pg 44	Zone 2 (water supply)
Map 31, Lot 61	Bakers Pond Rd.	5.3	Bk 3012 Pg 44	Zone 2 (water supply)
Map 38, Lot 173-1	Pine Pond	0.95	Bk 5248 Pg 50	Zone 2 (water supply)
Map 22, Lot 2	Main St. Rear	0.6	Bk 14208 Pg 63	Abuts conservation
Map 22, Lot 3	Main St. Rear	1.5	Bk 14208 Pg 63	Abuts conservation
Map 22, Lot 48	A.P. Newcomb Rd.	1.2	Bk 14208 Pg 63	Contains wetland
Map 35, Lot 70	Great Fields Rd. Rear	0.91	Bk 6829 Pg 309	Contains wetland
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Map 10, Lot 14	Namskaket Marsh	138.4	Bk 1913 Pg 166	Salt marsh
Map 50, Lot 18	East Gate Rd.	5.4	Bk 5444 Pg 279	Zone 2 (water supply)
Map 50, Lot 2	West Gate Rd.	18.4	Bk 3356 Pg 16	Zone 2 (water supply)
Map 50, Lot 60	West Gate Rd.	27.9	Bk 4765 Pg 256	Zone 2 (water supply)
Map 51, Lot 28	Slough Rd. Rear	5.7	Bk 5306 Pg 316	Zone 2 (water supply)

or to take any other action relative thereto.

(2/3rds vote required) (Board of Selectmen)

SUMMARY

This article will serve to protect important environmental values associated with these parcels by granting a perpetual conservation restriction to the Upper Croydon Conservation Trust and by placing the custody of these parcels under the control of the Town of Upper Croydon Conservation Commission. Many of these parcels are adjacent to other town conservation land. Some parcels are within or partially within a Zone of Contribution to municipal wells, therefore the protection of the land helps to protect the public water supply. Other parcels contain salt marsh, other wetland types, or are adjacent to wetlands. We have included a map in order to help identify their locations.

BOS:

FCR:

AFFIDAVIT UNDER G.L. c. 183 §5B

I, Milicent Fenwick, Town Clerk of the **TOWN OF UPPER CROYDON**, a Massachusetts municipal corporation having its principal offices at Town Hall, 2198 Main Street, Upper Croydon, Massachusetts, 02248, having personal knowledge of the facts stated herein, under oath depose and say as follows:

1. By action of the vote in favor of Article _____ at the Upper Croydon Annual Town Meeting held on May _____, 2012, care, custody, management and control of the parcels located in Upper Croydon, Barnstable County, Massachusetts listed on Exhibit A attached hereto and made a part hereof were transferred from the Board of Selectmen to the Town of Upper Croydon Conservation Commission having its principal offices at Town Hall, 2198 Main Street, Upper Croydon, Massachusetts, 02248, together with the right to do all things necessary to preserve in their natural state, while allowing for public passive recreation.

2. A certified copy of said Article #____, is attached hereto as Exhibit B.

3. Said parcels are transferred for the purposes as set forth in the General Laws Chapter 40, Sec. 8C and are hereby subject to the protections afforded under Article 97 of the Amendments of the Massachusetts Constitution.

Signed under the penalties of perjury this _____ day of _____, 2018

Name: Milicent Fenwick
Town Clerk, Town of Upper Croydon

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On this _____ day of _____, 2018, then personally appeared the above-named Milicent Fenwick, Town Clerk of the Town of Upper Croydon, before me, and proved to me through satisfactory evidence of identification, which were personally knowledge, and who swore or affirmed to me that the contents of the affidavit are truthful and accurate to the best of her knowledge and belief.

Notary Public
My commission expires:

CERTIFICATE

I, Patrick Moynihan, hereby certify that I am an attorney at law with an office at 2 Main Street, Upper Croydon, MA and that the facts stated in the foregoing Affidavit Under G.L. c. 183 §5B are relevant to the title to the premises therein described and will be of benefit and assistance in clarifying the chain of title therein.

Patrick Moynihan, Esq.