

From: [Elizabeth Kazinskas](#)
To: [Titi Siriphan](#)
Subject: Fw: [EXTERNAL] Rt. 140 Zoning Petition
Date: Tuesday, August 29, 2023 7:53:28 AM
Attachments: [image001.jpg](#)
[8-28-23 COG City Council.pdf](#)
[COG Minutes 1937.pdf](#)

Good morning Clerk Siriphan,

Please include this email and the attachments in Tuesday's regular meeting packet.

Best,
Lizzy

Elizabeth Kazinskas
City Council President
Finance Committee Chair
Councillor at-Large
City of Gardner
[\(978\) 337-1533](tel:(978)337-1533)
ekazinskas@gardner-ma.gov

From: John Flick <jflick@flicklawgroup.com>
Sent: Monday, August 28, 2023 4:03 PM
To: Elizabeth Kazinskas <ekazinskas@gardner-ma.gov>
Cc: Mayor <Mayor@gardner-ma.gov>; Trevor Beauregard <tbeauregard@gardner-ma.gov>
Subject: [EXTERNAL] Rt. 140 Zoning Petition

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President Kazinskas,

Please see the attached correspondence from the Law Department regarding the zoning petition for land along Rt. 140. Please let me know if you have any questions.

Best,
John

John M. Flick, Esq.



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CITY OF GARDNER LAW DEPARTMENT

John M. Flick
City Solicitor



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~~Ethan Kolodny~~
Assistant City Solicitor

Writer's Email:

August 28, 2023

VIA ELECTRONIC MAIL

Elizabeth Kazinskas, President
City of Gardner City Council
95 Pleasant Street
Gardner, MA 01440

Re: Rt. 140 Zoning Change to Parcels M47-22-4 and M47-24-1

Dear President Kazinskas:

I am writing regarding the petition to change the zoning classification of the above-referenced parcels, Parcels M47-22-4 (the "Heywood parcel") and M47-24-1 (collectively the "Parcels") from Rural Residential 2 to allow for commercial development. As you are aware, following the referral of the petition to the Planning Board by the City Council, the matter was referred to the City of Gardner Law Department with two questions; one question being whether or not the property is subject to Article 97. The purpose of this letter is to provide the Council with the findings of the Law Department regarding the applicability of Article 97 to the Parcels and, in light of these findings, to ascertain the intent of the Council.

The applicability of Article 97 to publicly owned land arises when a public landowner seeks to change the use of land from a use protected by Article 97 to another use. A change in zoning classification does not constitute a change in use. A change in use only arises when a public landowner seeks to sell, lease, or license land, or to develop land for public purposes which results in a change from one public use to another. Given the impact of Article 97 on any future use of the Parcels as a threshold question, the Law Department first undertook consideration of the Article 97 question. The request from the Planning Board for an Article 97 review is the first such request received by the Law Department regarding the Parcels.

Article 97 was passed and ratified in 1972 as an Amendment to the Massachusetts Constitution. The Article 97 Amendment states as follows:

“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 shall have the power to enact legislation necessary or expedient to protect such rights. 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, taken by yeas and nays, of each branch of the general court.”

Article 97 applies to all qualifying publicly owned land, whether owned by the Commonwealth of Massachusetts, its cities and towns, or any of its political subdivisions or other public entities. Article 97 grants all residents of the Commonwealth, i.e. the general public, an interest in these public lands by way of an easement. *Smith v. City of Westfield*, 478 Mass. 49, 59 (2017) citing *Lowell v. Boston*, 322 Mass. 709, 730 (1948).

Article 97 is premised on the well-established legal doctrine governing public owned land known as the doctrine of “Prior Public Use.” The Prior Public Use doctrine holds that “public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion.” *Mahajan v. Dep’t of Env’t Prot.*, 464 Mass. 604, 616 (2013). Article 97 must be read and applied consistent with the Prior Public Use doctrine. *Id.* Consistent with this well-established doctrine, Article 97 is applied retroactively to publicly owned lands acquired before 1972.

The starting point for any Article 97 analysis must, therefore, be a review of public records related to the acquisition of public lands in order to determine 1) what was the purpose for which the land was acquired, and 2) was any legislative action taken to abandon that original purpose. Prior Public Use can often be determined from the content of the documents, such as deeds or other documents recorded in the Registry of Deeds. This is not, however, completely dispositive to the application of Article 97 to publicly owned lands. Article 97 litigation has developed over the years to include lands which were acquired for general municipal purposes, but over time acquired Article 97 protections based on the use to which a municipality put the land. *Westfield*, 478 Mass at 59. In addition, local legislative history of land acquisition and ownership is critical to this analysis as public land ownership in the Commonwealth predates the revolutionary war. Given this long history, a municipality’s legislative record may contain vital information, but included in the recorded instruments, to assist with determining the Prior Public Use of publicly owned lands.

If this initial inquiry concludes that the land in question was originally acquired for Article 97 purposes, and no subsequent legislative action was taken to alter that purpose, the land is subject

to the use restrictions of Article 97 and its requirements if a change in use is sought. This does not mean that the use of land which is subject to Article 97 cannot be changed. However, such a change is a complicated process that developed over years of judicial interpretation and regulatory oversight. In 2022, the process was codified as the Public Lands Protection Act (the "PLPA"). *See M.G.L. c. 3, § 5A*. The PLPA, in addition to requiring a 2/3 vote of the local legislative body (i.e. the City Council), and a 2/3 vote of the Commonwealth of Massachusetts Senate and House of Representatives to change the use of Article 97 land, requires a public body seeking to change the use of Article 97 land to engage in a rigorous and costly review process before a change in use will be permitted. This process includes requirements that the public entity seeking the change in use identify other lands of equal size and/or value that the public entity may acquire or dedicate to Article 97 uses, public hearings, and studies, among other requirements unless an exemption is granted by the Secretary of the Executive Office of Environmental Affairs (the "EEA"), or the Legislature. This is a very simple summary of the PLPA requirements. For further details, I refer the Council to the guidance from the EEA regarding the requirements of the PLPA which was provided to the City Council by the Law Department earlier this year.

Prior to the request of the Planning Board, the Law Department had not been asked to review the Parcels in detail to determine if Article 97 applies. The Law Department did conduct a general review of the legal principles related to Article 97, as was a search of the Registry of Deeds to review the title history of the Parcels. This initial research led to a preliminary conclusion that Article 97 likely applied to the Parcels in question based on the use to which the land has been put. The acreage in question has been largely untouched for almost 100 years, is used by the public for hiking and biking trails, is bordered by dedicated conservation land including the Gardner City Forest, has been identified as conservation land in the City's Open Space Recreation Plan for 40+ years, among other Article 97 qualifying purposes. Questions have also been raised relevant to the inclusion of the Parcels in the City's watershed lands.

As stated above, the underlying zoning of land does not constitute a "use." Therefore, a change in zoning does not implicate Article 97. A detailed analysis would be appropriate and, in the Law Department's opinion, required when, and if the City sought to dispose of the land, thereby changing its use by either sale, lease or license, or development for some other public use such as a school or public building. Nevertheless, in response to the Planning Board's request, the Law Department has conducted a thorough historical review of City records to answer the following questions: 1) What is the purpose for which the City acquired the Parcels, 2) Is that purpose within the confines of Article 97, and 3) What, if any legislative action has been taken to abandon or alter the Prior Public Use of the Parcels?

The Heywood parcel, which consists of 120+/- acres was acquired by the City in 1937 from the Heywood Farm, Inc. The Law Department has been unable to locate a deed for Parcel M47-24-1. Since a deed has not been found, the Prior Public Use cannot be determined with certainty and

there is no date reference so as to identify a period of time in which the City Council considered the acquisition of this parcel. However, parcel M47-24-1 consists of all wetlands, namely Wilder Brook, and is not viable for development of any kind, residential or commercial. Verification of this only requires a simple visual inspection and walk along the North Central Pathway. It is unclear to the Law Department why parcel M47-24-1 is included in the zoning petition for the above-stated reasons. Given the condition of this parcel, plus the fact that the Commonwealth of Massachusetts has identified portions of this parcel as critical wildlife habitat, parcel M47-22-4 is included in the use of the term "Parcels" when discussing the applicability of Article 97 to both parcels.

The Heywood parcel appears to have been taken through a friendly eminent domain taking process as deeds signed by the grantors were recorded as opposed to instruments of taking. There is no statement of use set forth in the recorded deeds. Typically, an instrument of taking would clearly state the purpose for which the land was taken by a governmental entity. In the case of the Heywood parcel, the recorded deed lacks any such statement giving the appearance that the parcel was acquired for general municipal purposes, i.e. any lawful use the municipality desires. However, a very different story emerges when the legislative history of the City Council is reviewed. It is clear from the 1937 City Council minutes that the original public purpose for which the land was taken was the protection of the City's drinking water. The legislative record contains clear statements of purpose for the taking, and the 1937 Council used funds from the Gardner Water Department's Land Purchase Account to pay for the land. Given its proximity to the Heywood parcel, it is likely that parcel M47-22-4 was acquired for the same public purpose.

Enclosed you will find the applicable City Council minutes of meetings conducted between February 23, 1937, and April 13, 1937 detailing not only the votes taken by the Council, but reports of the investigation conducted and testimony provided during the public hearings in which the taking of the Heywood land for the protection of the City's public water supply was debated. Reading this record, the answer to the first question is unmistakable, the Prior Public Use for which the Parcels were acquired was the protection of the City's drinking water.

Turning then to the second question, Article 97 states, in relevant part, "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." Clearly, the use for which the Parcels were acquired is covered by Article 97, the peoples' right to clean water. Thus, the second question is answered in the affirmative.

The Law Department was unable to locate any subsequent legislative action in which this Prior Public Use was abandoned. While not conclusive, engineering plans were located for the layout of Route 140 in the early 1970's. These plans identify the Parcels as City of Gardner, Water Department land. These plans support the conclusion that there was no legislative action taken

by the City of Gardner between 1937 and 1972 to change the Prior Public Use from the protection of the City's water supply to some other use. Moreover, as stated above, the Parcels have been identified as conservation land in the City's Open Space Recreation Plan since the early 1980's. When this history is viewed in its entirety, question 3 can only be answered in the negative, thus concluding that the City has observed and maintained the original, Prior Public Use established when the Parcels were acquired in 1937 - the conservation and protection of the land for the City's public drinking water supply. The evidence in favor of Article 97 protection of the Parcels is unequivocal.

Based on the foregoing, it is the Law Department's opinion that Article 97 and the Public Lands Protection Act apply to the Parcels and will govern any future change in use sought by the City. The purpose of this letter, therefore, is to inquire if the City Council intends to pursue a change in use of the subject parcels in full compliance with the Public Lands Protection Act regardless of whether the zoning is changed. If so, then the Council should engage in a robust analysis of the PLPA requirements and whether or not there is any likelihood of the Commonwealth of Massachusetts approving any desired change in use of these Parcels or granting an exception to the PLPA and if so, the cost to the City in complying with the PLPA. This analysis should be conducted as a threshold analysis before any zoning change is considered.

If the Council desires to seek a change in use of these Parcels, then the Law Department recommends that the Council reconsider its referral of the zoning petition to the Planning Board and commence with a PLPA change in use analysis. This will allow the Council to determine the likelihood that a change in use may be approved, and the potential cost to the City of obtaining a change in use. Without this knowledge, any consideration of a change in zoning is simply an academic exercise.

Please let me know if the Council requires any additional information or would like to discuss this matter further.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. M. Flick", written over a horizontal line.

John M. Flick

Enc.

Cc: Mayor Michael Nicholson
Trevor Beauregard, Director of Community Planning and Development

CITY OF GARDNER

February 23, 1937

IN CITY COUNCIL

Special meeting

Tuesday evening, February 23, 1937. Special meeting of City Council held in the Council Chamber, City Hall. Meeting called to order at 7:30 o'clock p. m. by President Hartshorn.

Rollcall

Rollcall taken--Councillor Shippee absent.

Appointments confirmed

The following appointments received from the Mayor and confirmed:

PAUL B. AMOR as Assessor
for term expiring March 1, 1940

CLARA BOURGEOIS as Member, Board of Public Welfare
for term expiring February 28, 1940

FRED B. COLBY, M. D. as City Physician
for term expiring February 28, 1938

JOSEPH GLEBO as Special Police Officer
for in and around the Lithuanian Camp Grounds, off West
way, for term expiring January 30, 1938

GEORGE T. GREENWOOD as Cemetery Commissioner
for term expiring February 28, 1940

FRED G. KEGLER as Golf Course Commissioner
for term expiring March 1, 1942

STANLEY G. KENDALL as City Engineer
for term expiring March 1, 1938

HELEN B. PHELAN as Assistant Assessor
for term expiring March 1, 1938

Suspension of Council Rule

Voted to suspend the Council Rule in regard to appointments.

Appointments confirmed

The following appointments received from the Mayor and confirmed:

L. PORTER ANDREWS as Special Police Officer
for in and around the property of the Heywood-Wakefield
for term expiring January 30, 1938

ALEXANDER W. BROWN as Special Police Officer
for in and around the City Infirmary, without pay,
for term expiring January 30, 1938

Voted to pass the following order:

AN ORDER AUTHORIZING THE MAYOR TO DISPOSE OF
BUILDINGS LOCATED ON CONNORS STREET

ORDERED:

That the Mayor be and hereby is authorized to sell or otherwise dispose of all the buildings owned by the City and located on the Hilchey lot on Connors Street at such price and under such conditions as he may deem advisable.

Approved February 26, 1937
James A. Timpany, Mayor

Voted to refer to the Finance and Public Service Committees the recommendation received from the Board of Public Works to purchase, for water protection, the land and buildings owned by Heywood Farm Inc., and also a small parcel of land and cottage house in the Heywood Farm group of buildings owned by Harriet Heywood.

On the petition of the Gardner Electric Light Co. for pole and wire locations on Otter River Road it was voted to hold a hearing on April 5, 1937, or at a special meeting if due notice could be given for the hearing.

Kelty Motors granted a first class license to purchase, sell, exchange or assemble second-hand motor vehicles or parts thereof.

Monadnock Council Boy Scouts granted permits, under the supervision of the Building Inspector,

to hang a banner in West Gardner S.

An Order Authorizing the Mayor to Dispose of Buildings Located on Connors Street passed

Recommendation purchase Heywood Group of buildings and land on Gre St. referred to Finance and Public Service Committee

Re Gardner Electric Light Co. petition for pole and wire locations on Otter River Road

Kelty Motors granted 1st class license

Monadnock Council Boy Scouts granted sign permits

Appointment laid
on the table

The following appointment received from the Mayor and laid on
table:

LESLIE F. WHEELER as Special Police Officer
for in and around the Methodist Church, Chestnut Street

Appointments of
Measurers of
Wood and Bark
confirmed

Voted to appoint the following Measurers of Wood and Bark

Lucian D. Stedman
Mervyn W. Sweet
George D. Young

Heywood Farm
Property propo-
sition laid on
the table until
the next regular
meeting

Francis H. Kingsbury, First Assistant Engineer in the State Department of Public Health conducted a general discussion and plantation of the condition of the Heywood Farm as a watershed of Crystal Lake. Voted to lay the proposed purchase of Heywood Property by the Water Department of the City of Gardner on the table until the next regular meeting.

Authorization of
publicity

Voted that the press be requested to give this matter publicity.

Adjourn

Voted to adjourn at 9:50 o'clock p. m.

A true copy, Attest:

Benjamin A. Holden
Clerk of the City Council

CITY OF GARDNER

April 5, 1937

IN CITY COUNCIL

Regular meeting

Monday evening, April 5, 1937. Regular meeting of the City Council held in the Council Chamber, City Hall. Meeting called to order at 7:30 o'clock p. m. by President Hartshorn.

Rollcall

Rollcall taken--All members present.

Records approved

Records of regular meeting of March 1, special meetings of March 15 and March 22 read and approved as corrected.

Voted to refer to the Finance Committee for consideration a petition from the Police Department regarding restoration of pay and an increase of 20 per cent.

Voted to refer to the Finance Committee for study, as far as the Council has control, a petition signed by approximately 2000 citizens of the City of Gardner regarding restoration of City Employees' pay cut plus a twenty per cent increase.

The joint Finance and Public Service Committees unanimously recommended the purchase of Heywood Farm property by the Water Department of the City of Gardner and it was voted that the report of committee be spread upon the records of the Council. (See page 415)

Voted that a public hearing be ordered for April 12, 1937 at 7:30 p. m. regarding the purchase of Heywood Farm property.

Upon recommendation of the Finance and Public Safety Committees it was voted to approve a possible W.P.A. Project at Lake Street Fire Station.

Voted that the report of the Public Safety Committee re bus parking be delayed until the report regarding the Traffic Code is received.

Voted to consider the following matters not listed on the calendar:

Hackney Operator Licenses granted

Silas F. Baker
J. Bradley Foskett
Joseph H. LeBlanc
John F. Murray
George W. Stone
Alex J. Bujnicki

Sidewalk referred
to Public Service
Committee

Voted to refer a petition for a concrete sidewalk on the north side of Crawford Street, from Mechanic Street to No. 37 Crawford Street, to the Public Service Committee.

Drain near the
F. A. Nichols Co.
property
across the #2
Route

In regard to a drain near the F. A. Nichols Co. property across the #2 Route it was voted that the matter be left to the City Solicitor for a suitable solution.

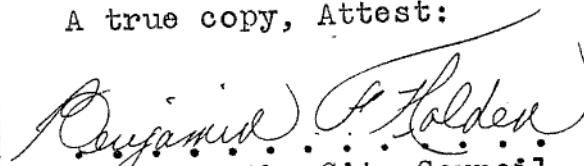
Stuart Street
Playground

Voted to informally request the Mayor to present an order to Council covering the equipment required for the Stuart Street Playground.

Adjourn

Voted to adjourn at 10:05 o'clock p. m.

A true copy, Attest:


Clerk of the City Council

CITY OF GARDNER

April 12, 1937

IN CITY COUNCIL

Special Meeting

Monday evening, April 12, 1937. Special meeting of the City Council held in the Council Chamber, City Hall. Meeting called to order at 7:30 o'clock p. m. by President Hartshorn.

Rollcall

Rollcall taken--All members present.

Consideration of
matter not listed

Voted to consider the matter of drawing jurors, not listed on the calendar:

Jurors

Ernest L. Bolster and Gilbert H. Howe drawn as traverse jurors for Criminal Session of Superior Court to be holden at Worcester, Monday, May 10, 1937.

Public Hearing
re purchase of
Haywood Farm

The Council then adjourned to the City Hall Auditorium for public hearing in regard to the purchase of the Haywood Farm.

PURCHASE OF FIRE TRUCKS

An order entitled "Appropriation and Loan Order" passed by the City Council on January 4, 1937 and approved by Mayor January 5, 1937. Said order being with reference to the purchase of two (2) new fire trucks is hereby amended by striking out of said order after the word appropriation "that the sum of Six Thousand (\$6,000) Dollars be raised in the tax levy for the current year" therefor and inserting in place thereof "that the sum of Twenty-Three Thousand Five Hundred (\$23,500.00) Dollars be raised in the tax levy for the current year" so that order as amended will read:

Whereas an emergency exists with reference to Fire Department equipment which involves the safety of the public or their property; now therefor it is ordered that the sum of Twenty-Three Thousand Five Hundred (\$23,500.00) Dollars be appropriated for the purpose of purchasing two (2) new fire trucks for the Fire Department and that said appropriation be raised in the tax levy for the current year.

Approved April 13, 1937
James A. Timpany, Mayor

AN ORDER APPROPRIATING MONEY TO THE PARKS AND PLAYGROUNDS ACCOUNT

ORDERED:

That the sum of Nine Hundred Thirty-One Dollars and Twenty-Six (\$931.26) Cents be appropriated to the Parks and Playgrounds Account for the purpose of purchasing equipment for the Ovila Cas Playground. Said appropriation to be raised in the tax levy for the current year.

Auctioneer's Lic.

Martin E. S. Anderholm granted an Auctioneer's License.

Lodging House Lic

Charles Wuorenmaa granted a Lodging House License.

Sunday Licenses
grantedLicenses to sell frozen desserts, ice cream mix, confectionery
soda water or fruit on the Lord's Day granted

Wilfred Bourret

Victor Chojnowski

Woods' Spa

Hackney License

Adam A. Pilkovsky granted a Hackney License.

Hackney Op. Lic.

Adam A. Pilkovsky granted a Hackney Operator's License.

Consideration of
matters not listedVoted that all matters, received too late to be listed on the
calendar, be taken up for consideration.Mayor's communi-
cation re rest-
oration of the
remainder of the
wage reductionVoted to refer to the Finance Committee the communication rec-
from the Mayor in regard to restoration of the remainder of t
reduction to take effect July 1, 1937.Petition from
Elzear MelansonVoted to refer to the Public Safety Committee the communicati
received from Elzear Melanson in regard to driveway restrictiPetition from
Mrs. Ernest
RumeryVoted to refer to the Public Safety Committee the communicati
received from Mrs. Ernest Rumery in regard to parking on Cent
Street.On motion made by Councillor Dewey, seconded by Councillor Gr
and upon rolleall taken as follows

8 in the affirmative

3 in the negative

Councillor	Hartshorn
"	Anderholm
"	Beauregard
"	Dewey
"	Edgell
"	Greenwood
"	Shippee
"	Stiles

Councillor	Goguen
"	Palmer
"	Sullivan

the following order was passed:

Deeds, Book 2640, Page 355, the same being purchased for the protection of the City water system and to meet said appropriation that the sum of Twenty Thousand Dollars (\$20,000.00) be appropriated from the Water Department available surplus and Ten Thousand Dollars (\$10,000.00) from Water Department Land Purchase Account and that the Treasurer, with the approval of the Mayor, be and he hereby is authorized to borrow Forty Thousand Dollars (\$40,000.00) and to issue bonds or notes of the City therefor, payable according to the provisions of Chapter 44 of the General Laws so that the whole loan will be paid in not more than four years or at such earlier date as the treasurer and mayor may determine.

Approved April 13, 1937
James A. Timpany, Mayor

On an informal motion that all buildings be removed from the Heywood Farm the Council voted in the negative.

Voted to adjourn at 9:20 o'clock p. m.

(Regular meeting April 5, 1937, Page 411)

REPORT OF COMMITTEE RE PROPOSED PURCHASE
OF PROPERTY KNOWN AS THE HEYWOOD FARM BY
THE WATER DEPARTMENT OF THE CITY OF GARDNER.

The joint Finance & Public Service Committees appointed by the Council to investigate and report on this proposed purchase of land have endeavored to consider the matter from every possible angle. We have been over the ground thoroughly and conferred at length with the Board of Public Works and representatives of the State Dept. of Health. It appears evident from all of these sources of information that:

1. It is vitally essential that the residents of our City be at all times adequately supplied with good, pure, clean water free from disease carrying germs of any kind.

6. Both the local and State Boards seem convinced that the bacteria count and the marked increase in vegetable growth or algae during the last few years are due in a large extent to the introduction of increasing amounts of animal and domestic sewerage into the lake. The principal source of this contamination seems to be the Heywood-Farm for several reasons:
 - A. There are at present six houses on this property with no facilities for sewerage disposal other than cesspools.
 - B. There are approximately 200 head of cattle on this property.
 - C. There are innumerable underground blind drains on this property all leading directly into the lake.
 - D. The house cesspools are in some instances very close to these drains.
 - E. The farm land is very heavily manured on the surface each year and the natural surface drainage carries the impurities from the manure directly into the lake.
 - F. The soil on this property is very heavy and as a consequence the cesspool water does not easily leach away into the lake. At a result they overflow very frequently and help contribute to the surface drainage flowing into the lake. This also causes the rain water to flow on the surface into the lake accompanied by animal and domestic sewerage rather than soak into the ground and purify itself by filtration.

For the above reasons it seems very essential for the proper protection of our water supply to either remove the possibility of these impurities getting into Crystal Lake or else take the necessary steps to destroy them before the water is used for drinking purposes.

Several possible solutions to the problem have been suggested and studied. These are listed below together with the principal arguments for and against.

1. The purchase of the entire Heywood Farm property with necessary steps then being taken by the Water Department to remove the sources of contamination.

ARGUMENTS IN FAVOR.

- A. Would result in all water entering the lake from this drainage area being pure at the source and free from dangerous bacteria.
- B. Would prevent possibility of additional real estate development on this drainage area in the future which would tend to seriously increase the danger as human sewerage is far more likely to contain germ bearing bacteria than is animal sewerage.
- C. Can be purchased by the City at this time for \$70,000 which is appreciably less than the assessed valuation (that being \$74,350).

2. The possibility of removing the sources of contamination by purchasing and cleaning up that part of property on the west side of Green Street.

ARGUMENTS IN FAVOR

- A. Would not cost as much as to purchase the entire property.
- B. Would not remove as much property from taxation or possible real estate development.
- C. Would clean up unsanitary condition caused by three houses on west side and prevent further fertilizing of farm land on that side which slopes directly to lake.

ARGUMENTS AGAINST

- A. Due to contour of land on the east side of Green Street and the many underground drains going under the road from the east side to west side, also surface water running across the road, the purchase of only that part on the west side would only partially eliminate the present situation.
 - B. The cost of the West side would be far out of proportion to the cost of the whole property as it would so materially reduce the planting area as to make it impossible to feed a herd of the present size and would, therefore, seriously injure the value of the farm.
 - C. Would still permit present or some future owner to build more houses on East side which would again increase danger of contamination.
3. Constructing a series of large filter beds near the edge of the lake to filter and cleanse the contaminated water before it reaches the lake.

ARGUMENTS FOR

- A. Would save the necessity of purchasing any of the property, except that portion which would be required for these beds and would leave the remainder as taxable property either for its present use or possible future development.

ARGUMENTS AGAINST

- A. It is estimated by competent authorities that at least four large beds of one acre each would have to be built which would cost about \$25,000 to construct, and as much per year to maintain as the city would lose in revenue through taxation if the entire

ARGUMENTS AGAINST

- A. This plan would only take care of the domestic sewerage and such animal sewerage as come from the barns. It would not eliminate in any degree the contamination of surface drainage into the lake from heavy fertilization or back yard rubbish, etc.
 - B. There is always the danger that a break in the sewer line might develop, which would be very hard to detect but which would let concentrated sewerage into one of the present underground drains leading into the lake.
 - C. About 5,000 feet of sewer main would be necessary and furthermore, inasmuch as this land is considerably lower than the grade of the present sewer which terminates near the hospital, it would be necessary to erect and operate an expensive pumping station. The total cost of this plan has been estimated from \$50,000 to \$75,000. The operating cost would be difficult to estimate; it would depend largely upon the quantity of sewerage handled.
5. Constructing properly working cesspools or septic tanks connected to every house and barn.

ARGUMENTS IN FAVOR

- A. Would save the necessity of purchasing any of the property and would leave it under taxation either for its present use or future development.

ARGUMENTS AGAINST

- A. This plan like No. 4 would only take care of the domestic sewerage and such animal sewerage as came from the barns but would not prevent contamination of surface drainage.
 - B. Cesspools and tanks have been for years in operation on this property but never very successfully due to the nature of the soil, which is heavy and solid and will not permit the accumulation of liquid to filter away. As a consequence they frequently give trouble by overflow directly to the lake.
6. Continuing the increased use of chemicals to kill off the bacteria and algae after they get into the lake.

ARGUMENTS IN FAVOR

- A. Would save the necessity of purchasing any of the property and would leave it under taxation either for its present use or future development.

ARGUMENTS AGAINST

- A. As previously stated the State Dept. of Health very urgently recommends that whenever possible municipalities make every effort to take every possible step to

the source rather than allowing it to be contaminated and then attempting to kill the disease carrying germs or vegetable growth by use of chemicals, because in all such cases the people are drinking unclean and impure water even though it may not be injurious to health.

- B. The installation cost of such a filtration is estimated by approximately \$200,000 and the annual operating and maintenance cost approximately \$k5,000 per year.
- 8. Discontinuing the use of Crystal Lake as a water supply and the possibility of securing a suitable and adequate supply elsewhere.

This is altogether too large a proposition to be comprehensively considered in this report. Suffice it to say that the cost would run into many hundreds of thousands of dollars and our City is in no position to give it serious consideration at this time nor will it be for years to come.

CONCLUSIONS AND RECOMMENDATIONS

Your committee has attempted to analyze each of the above plans carefully giving due weight to each of the arguments pro and con. We have endeavored to give consideration to the present situation and to the picture as it may present itself in years to come. We believe that every resident of our City is vitally interested in securing and preserving a clean, pure, sanitary supply of water, having as little bacteria or algae growth as it possible.

We also believe every resident will agree that the logical and best way to accomplish this result is to keep the water clean and pure at the source rather than let it get contaminated and impure and then endeavor to remove such part of the impurities as may be detrimental to health by use of artificial means.

Your committee therefore unanimously concurs with the Board of Public Works and the State Dept. of Health in recommending the immediate purchase of the entire property known as the Heywood Farm now owned by George H. Heywood, Jr. and Mrs. George H. Heywood for the sum of \$70,000, said purchase to be financed entirely through the surplus revenue account of the Water Department for the following reasons:

1. This appears to be the only way in which the surface water and underground drainage water from this area can be kept pure at the source.
2. The Board of Public Works has realized the increasing unsanitary condition of this portion of the water-shed for several years, and have been constantly studying

in reducing the amount of chemical treatment necessary to absolutely insure our getting safe, odorless, good tasting water in future years.

Respectfully submitted,

Joint Finance & Public
Service Committees

O. R. Anderholm
Harry K. Edgell
Raymond C. Beauregard
Stanford H. Hartshorn
Charles R. Dewey

A true copy, Attest:

Benjamin F. Holden
.....
Clerk of the City Council

CITY OF GARDNER

May 3, 1937

IN CITY COUNCIL

Regular meeting

Monday, May 3, 1937. Regular meeting of the City Council held in the Council Chamber, City Hall. Meeting called to order at 7:30 o'clock p. m. by President Hartshorn.

Rollcall

Rollcall taken--All members present.

Records
approved

Records of regular meeting of April 5 and special meeting of April 12 read and approved.

Appointments
confirmed

The following appointments received from the Mayor and confirmed:

ALBERT E. DELL as Member of Board of Retirement for term expiring July 1, 1940

CLAY E. MCKEAN

From: [Trevor Beauregard](#)
To: [John Flick](#)
Cc: [Mayor](#); [Elizabeth Kazinskas](#); mschafron@comcast.net; [Christine Fucile](#); [Titi Siriphan](#); [Dana Heath](#)
Subject: Legal Determinations for Zoning Amendments
Date: Wednesday, August 23, 2023 12:13:27 PM

Dear Attorney Flick,

Please be advised that the Planning Board, at its August 23, 2023 meeting, voted unanimously to request two legal determinations from the City Law Department relative to an Ordinance to amend the Code of the City of Gardner, Chapter 675 thereof, entitled "Zoning," to change the classification of certain parcels of land along Route 140 (Green Street). The parcels are identified as M47-22-4 on the south side of the roadway, and a portion of M47-24-1 (that portion west of bike trail parcel M42-20-7 as shown on the City's Assessor's maps) on the north side of the roadway. The total acreage is approximately 177 acres. Please note that no maps or legal descriptions were included in the amendment request. The following is respectfully requested by the Board:

1. A legal determination on whether this zoning amendment would constitute spot zoning; and
2. A legal determination on the status of the land with regard to Article 97 of the amendments to the Constitution of the Commonwealth.

Please feel free to contact me if you have any questions.

Thank you,
Trevor

Trevor Beauregard

Director

Dept. Community Development and Planning

115 Pleasant Street

Gardner, MA 01440

978-991-5842

Executive Director

Gardner Redevelopment Authority

From: [Trevor Beauregard](#)
To: [Dana Heath](#)
Cc: [Mayor](#); [Elizabeth Kazinskas](#); mschafron@comcast.net; [Christine Fucile](#); [Titi Siriphan](#)
Subject: Planning Board meeting attendance - Zoning Amendments
Date: Wednesday, August 23, 2023 9:48:18 AM

Good morning Councilor Heath,

At their meeting last night, the Planning Board suggested that I reach out to you and request your presence at their next meeting on September 19, 2023, 6:30 p.m. to address questions and comments from the Board regarding the three zoning amendments you've submitted. As the petitioner of the three amendments, your input and feedback would be appreciated prior to the Planning Board making the necessary recommendations to the City Council.

Please confirm your availability at your earliest convenience and feel free to contact me with any questions.

Thank you,
Trevor

Trevor Beauregard
Director
Dept. Community Development and Planning
115 Pleasant Street
Gardner, MA 01440
978-991-5842

Executive Director
Gardner Redevelopment Authority

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675
THEREOF, ENTITLED “ZONING,” TO CHANGE THE CLASSIFICATIONS OF CERTAIN
PARCELS OF LAND ALONG ROUTE 140.**

WIIEREAS, the City of Gardner is the owner of two parcels of land comprising approximately 177 acres as herein described on Green Street, also known as Route 140, which are currently vacant land zoned as Rural Residential 2; and

WHEREAS, the City of Gardner has few large parcels of land available for commercial development; and

WIIEREAS, pursuant to the purposes of Gardner’s Zoning Ordinance as stated in Chapter 675, Section 110, it would promote the general welfare of Gardner’s inhabitants and increase the amenities of the City to allow economic development of the subject parcels for commercial uses, which are expected to increase employment opportunities, retail services and the City’s tax base; and

WHEREAS, it would also promote the purposes of Gardner’s Zoning Ordinance to protect the health and safety of its inhabitants by limiting residential development along the Route 140 corridor to reduce the number of potential single family driveways with direct access to Route 140, as a means of improving traffic safety; and

WHEREAS, a change in the subject parcels’ zoning designation to the Commercial 2 zoning district will best meet these public purposes;

NOW, THEREFORE, The Undersigned Petitioners request that the City Council enact the following Ordinance:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

PREAMBLE: That “An Ordinance Establishing the Boundaries of the City with Regulations and Restrictions to be Enforced and to be known as the Zoning Code” (Chapter 675) adopted by the City Council December 9, 1970 and amended several times thereafter be further amended as follows:

SECTION 1: By changing the zoning district classification from Rural Residential 2 to Commercial 2 for two (2) parcels of land situated northerly and southerly of Route 140 Street, being parcels M47-22-4 and a portion of M47-24-1 (that portion west of bike trail parcel M42-20-7 as designated by maps submitted herewith) on the City of Gardner Assessor’s Map.

Total area of proposed zoning change being approximately 177 acres.

SECTION 2: This Ordinance shall become effective upon passage and publication as required by law. Any claims of invalidity by reason of any defect in the procedure of adoption may only be made ninety days after the posting or the second publication.

From: [Trevor Beauregard](#)
To: [Dana Heath](#)
Cc: [Mayor](#); [Elizabeth Kazinskas](#); mschafron@comcast.net; [Christine Fucile](#); [Titi Siriphan](#)
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Trevor

Trevor Beauregard
Director
Dept. Community Development and Planning
115 Pleasant Street
Gardner, MA 01440
978-991-5842

Executive Director
Gardner Redevelopment Authority

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED “ZONING,” TO AMEND SECTION 1070 THEREOF, ENTITLED, “MARIJUANA ESTABLISHMENTS” TO CHANGE THE METHOD TO INCREASE THE QUOTA ALLOWED BY THE CODE OF THE CITY OF GARDNER.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

SECTION 1: Subsection (C)(8)(b) of Section 1070 of Chapter 675 of the Code of the City of Gardner be amended by replacing the paragraph in its entirety and amending the Ordinance as follows:

b) The number of marijuana retail establishments shall be limited to the amount specified by Section 5 of Chapter 306 of the Code of the City of Gardner, as the same may be amended from time to time. No permit, special permit or variance may be granted for a marijuana retail establishment which results in a violation of this limit;

SECTION 2: That this ordinance take effect upon passage and publication as required by law.

From: [Trevor Beauregard](#)
To: [Dana Heath](#)
Cc: [Mayor](#); [Elizabeth Kazinskas](#); mschafron@comcast.net; [Christine Fucile](#); [Titi Siriphan](#)
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Thank you,
Trevor

Trevor Beauregard
Director
Dept. Community Development and Planning
115 Pleasant Street
Gardner, MA 01440
978-991-5842

Executive Director
Gardner Redevelopment Authority

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 675 THEREOF, ENTITLED “ZONING,” TO ADD “SPORTS BETTING” TO THE ZONING TABLE OF USES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

SECTION 1: That Section 210(B) of Chapter 675, entitled “Word Usage and Definitions,” be amended by adding the following definition to its list:

Sports Betting Facility – A lot or structure operated by an entity licensed as a Sports Wagering Operator or Qualified Gaming Entity by the Massachusetts Gaming Commission under the provisions of M.G.L. c. 23N, 128A and 128C, as the same may be amended from time to time, to conduct sporting and sports wagering events, including but not limited to horse racing and simulcast wagering, subject to and operated in accordance with the restrictions of such license. Sports Betting Facilities may be indoor or outdoor facilities.

SECTION 2: That Attachment 1 of Chapter 675 of the Code of the City of Gardner, entitled “Zoning- Table of Uses,” be amended by adding a new Section 54(a) immediately following Section 54, entitled “Sports Betting Facility” with the zoning district designations as follows:

Description of Use	SFR1	RR2	GR3	COM1	COM2	IND1	IND2
54a. Sports Betting Facility, provided that any structure is so insulated and maintained as to confine noise to the premises, and is located not less than 100 feet from a residential district, excepting any access driveway.	NP	NP	NP	SPPB	SPPB	SPPB	NP

SECTION 3: This this ordinance take effect upon passage and publication as required by law.