

COMMITTEE ON THE HIGH SCHOOL
MID-CAMBRIDGE NEIGHBORHOOD ASSOCIATION
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Cambridge, Massachusetts 02139
Telephone 868-1020/491-7111

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CAMBRIDGE, MASS.

September 2, 1975

Massachusetts Department of Education,
Administrator, School Building Assistance Program
City of Cambridge, City Manager
City of Cambridge, City Council
City of Cambridge, School Committee

People:

It is my understanding that you presently have plans to destroy most or all of the park donated by Frederick H. Rindge which is located in the City of Cambridge between the Cambridge Public Library and Cambridge Street, and which was originally bounded by Trowbridge and Irving Streets, part of the parcel bounded also by Broadway. You are hereby informed that said plans are illegal, in that they violate contractual obligations accepted by the City of Cambridge when said City accepted the gift and that said obligations are enforceable by a suit of ten taxpayers of the City. I encourage you to abandon these plans rather than continue and be faced with the possibility of a suit which you cannot win. The time which would be wasted could be better spent planning and constructing a high school on another, more appropriate site.

To be specific, as recorded in Book Y of the official records of the City Council and predecessor bodies, the gift was offered by letters dated June 14 and 15, 1887. In the letter of June 14, the donor offered the property and promised to build a public library thereon under the condition that a certain plaque be located in the building and that "a portion of said tract of land be reserved as a playground for children and the young". The board of aldermen, according to said official record, immediately accepted the gift as follows: "Resolved, That the City of Cambridge accepts with profound gratitude the munificent gift of land and buildings for a Public Library as stated in his letter of June 14, 1887; that the city accepts it upon the conditions stated in said letter, which it will faithfully and gladly observe as a sacred trust, in accordance with his desire."

The deed for the property is recorded at the Registry of Deeds for Southern Middlesex at Book 1914, page 291, and dated June 14, 1889. It states, in pertinent part, "If it is consistent with other uses, I shall be glad to have some portion of the land reserved as a play ground for young children, and if the City of Cambridge shall desire at any time to erect upon the premises additional buildings to be occupied as a museum of art, or halls for lectures, or some kindred purpose I assent to such use, but I do not intend that any portion of the land hereby conveyed shall be used for any of the purposes of ordinary city business, such as a site for a city hall or a police station or even for a school house." It should be noted that Mr. Rindge also gave extensive property to the city for such other purposes. He specifically did not make this a condition of the deed, but he did leave it "to the honor of the people and officers of my native town to see that these wishes as above stated are respected."

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The property transferred to the City by this exchange of documents was the entire piece of land bounded by Cambridge Street, Trowbridge Street, Broadway, and Irving Street.

In 1945, the Cambridge City Council was considering placing a War Memorial on the Broadway side of the library within the property conveyed by this deed. At the meeting of March 19, 1945, as recorded in the official record thereof, the council was informed by City Solicitor John A. Daly, that the circumstances above described under which the city obtained the property prohibited the city from using the property in any manner than above stated.

On July 17, 1975, the Massachusetts Supreme Judicial Court announced its decision in the case of BERNARD J. DUMPHY & others v. COMMONWEALTH & others. This case is officially reported in the Massachusetts Supreme Judicial Court Advance Sheets for 1975 at page 2361. This decision prohibited the Town of Rockland from constructing a skating rink on property which had been donated to the town for use as a park, in spite of the fact that approval had been received from the legislature for the said construction. The court's decision, at pages 2368 to 2371, is exactly on point.

The court stated:

The decisive issue in this case is whether the town (a) obtained and held title to the land in question as the unconditional owner thereof in fee simple, subject to G.L. c. 45, s. 7, to the effect that "(1) and taken for or held as a park under this chapter shall be forever kept open and maintained as a public park, and no building which exceeds six hundred square feet in area on the ground shall be erected on a common or park dedicated to the use of the public without leave of the general court," but with the right to divert the land to other uses and purposes when expressly authorized to do so by the Legislature . . . [citations], or (b) obtained and held title to the land under circumstances which made the land subject to a public charitable trust requiring that the land be used only for the purposes of a public park without any power in the Legislature to authorize or require the town to divert the trust property to other uses or purposes . . . [citations].

We hold that the present case falls in the second category described above, and therefore that the town took and held title to the Reed Park land as trustee under a public charitable trust requiring it to use the land for a public park in perpetuity. The facts of this case are very similar to those involved in Salem v. Attorney Gen., supra, where a testator devised some land called "Ledge Hill" to the city in 1895 "to be used forever as Public Grounds for the benefit and enjoyment of the citizens of said City." . . . By St. 1957, c. 148, the Legislature attempted to authorize the city to use a portion of the land for the erection of a public school building. After a discussion of whether the words "Public Grounds" meant "public park," we said, . . . , "We think that the devise was intended to grant Ledge Hill to the city to be used for the purposes of a public park If this was the intent of the testator, it almost necessarily follows that he intended

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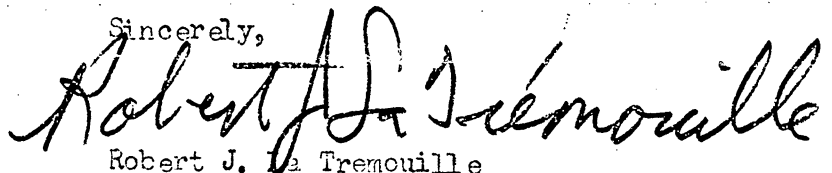
to establish a trust to effect this purpose as only by such means could its use for a public park be effected in perpetuity. The acceptance of the grant by the city constituted a contract between the donor and the donee which must be observed and enforced. . . . As the use authorized by the 1957 statute is at variance with the use for which the city holds the land, it impairs the obligation of the contract and affords no right to the school committee to use the land for school purposes."

The rule of the Salem case is controlling in the present case. The town in taking title to the Reed Park land assumed obligations and must now comply with them. It is not within the power of the Legislature to impair those obligations by legislation, and St. 1972, c. 89, does not validate the diversion of the property from public purposes to other uses and purposes.

General Laws c.184, ss. 26 and 28, both as amended, relating to the creation, duration, recording and limitations on the enforceability of restrictions and conditions affecting land have no application to the trust in perpetuity involved in this case. Those statutes do not by their terms purport to limit the life of a public charitable trust or to limit the time within which legal proceeding to enforce the rights of the public thereunder may be commenced.

I therefore strongly urge you to cease your present actions. Other locations which you might consider would include the city dump site, and rebuilding on the present site of Cambridge High and Latin. The former was the option most favored by the experts who advised the city on this matter. The latter appears to be increasingly favored by persons with whom I have been talking. It would require the moving of the School Department from Rindge Tech, presently under School Committee consideration, moving part of the Cambridge High and Latin student body into that and other space in Rindge Tech and destroying and rebuilding High and Latin in parts, with the balance of the student body using that part which is not being worked on at the time.

Sincerely,



Robert J. Tremouille
Assistant Chairman

Comm. from Robert J. LaTremouille re:
park donated by Frederick H. Rindge.

In City Council,
September 8, 1975

9/8/75

Referred to the
City Manager.

copies sent to
city manager
9-11-75 CS