



# KOPELMAN AND PAIGE, P.C.

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August 30, 2011

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BY ELECTRONIC TRANSMISSION AND  
BY FIRST CLASS MAIL

Ms. Jodi Ross  
Town Manager  
Westford Town Hall  
55 Main Street  
Westford, MA 01886

Re: Parking for the Bruce Freeman Rail Trail/Westford

Dear Ms. Ross:

You have requested an opinion as to whether a parking facility on Town-owned land is a permitted accessory use to a recreation facility (the Bruce Freeman Rail Trail) that is located on state-owned land. In my opinion, an accessory use must be on the same parcel as the primary use served, or on an abutting parcel in the same ownership. If the parking facility were on the same lot as the recreation facility it served, as is common, it would be permitted (assuming the recreation facility is itself permitted). My opinion is supported by the text of the Westford Zoning Bylaw, which supplies a definition of municipal parking facility and expressly provides that a municipal parking facility is not a permitted use in a residential zone, which I interpret to mean it is not a permitted primary use. If there is no ownership connection between the rail trail parcel and the parking lot parcel, then, in my opinion the primary use of a lot developed for such parking is a "municipal parking facility" and a Zoning Bylaw amendment would be required to permit such a facility in a residential zoning district.

If the Commonwealth of Massachusetts were to be granted an easement on the Town land for the parking, or if the Town were to be granted an easement on the state land for the rail trail, the parking could be considered accessory, in my opinion. A mere agreement between the Town and the Commonwealth, however, whereby the Town will maintain the rail trail and provide parking facilities for access to the rail trail, would not give the Town or the state parcels the kind of common ownership that would enable the parking facilities to be accessory, in my opinion. A grant of an easement upon the state rail trail land by the Commonwealth to the Town, or a long-term lease from the Commonwealth to the Town, could be accepted without a Town Meeting vote by the Park and Recreation Commission, in my opinion, under G.L. c.45, §14, provided that no appropriation is needed to pay for the easement or lease. A grant of easement upon Town-owned land by the Town to the Commonwealth, or lease of such land by the Town to the Commonwealth, for a parking facility, would require a Town Meeting vote, which would be a majority vote under G.L. c.40, §3, unless the land is held for a specific purpose that is inconsistent with the grant of easement or lease, in which case a two-thirds Town Meeting "transfer" vote would be needed under G.L. c.40, §15A

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(as well as a vote by the board having custody of the land that it is no longer needed for its former purpose or solely for its former purpose). If the Town land is held for a specific purpose protected under Article 97 of the Amendments to the Massachusetts Constitution, state legislative approval would also be required for the grant of an easement or lease.

In summary, in my opinion, where the rail trail is located on state-owned land, and the contemplated parking is to be situated on Town-owned land, the parking would not be considered an accessory use, as there is not the common ownership needed under the Zoning Bylaw. However, if the Commonwealth were to convey an easement or grant a long-term lease on the state-owned land, or, conversely, the Town were to convey an easement or grant a long-term lease on the Town-owned land, the parking could be considered an accessory use, in my opinion.

Another possibility that might be considered is a variance, but it may be difficult to meet the standards for the grant of a variance under the Zoning Act, G.L. c.40A and the Zoning Bylaw.

Finally, if an analysis of the legislative intent behind the state-owned rail trail reveals that the state is acting in a governmental function, and its legislative mandate should not be interfered with by local interests, it is arguable that the state-owned land, and the uses associated with it, may be exempt from the Zoning Bylaw. The state would, however, still need to own, or have an interest in, the property where the parking will be located, as discussed above.

Please do not hesitate to contact me with any questions.

Very truly yours,



Katharine Lord Klein

KLK/jmm

432512/WSFD/0014