

Committee of the Whole
Minutes of the Meeting
September 21, 2020

1. Vice-President McMenimen called the meeting to Order at 8:00pm.
2. Vice-President McMenimen requested that a roll call be taken to record the attendance for the meeting. The Clerk called the roll – President Brasco, Councillors Darcy, Dunn, Durkee, Harris, LaCava, LaFauci, LeBlanc, Mackin, McLaughlin, O'Brien, Paz, Stanley, Vidal and Vice-President McMenimen were present.
3. A motion by President Brasco to accept the minutes of the COW meeting held on June 22, 2020 was adopted on a voice vote and the minutes of the June 22, 2020 meeting were accepted.
4. A motion by President Brasco to accepted the minutes of the COW meeting held on August 3, 2020 was adopted on a voice vote and the minutes of the August 3, 2020 meeting were accepted.
5. A communication was received from the Mayor concerning the acceptance of the proposed Conservation Restriction on the 6-acre City-owned land at No. 0 Chesterbrook Road (aka 605R Lexington Street). President Brasco moved to hear from the Mayor and Assistant City Solicitor Patricia Azadi. The motion was adopted on a voice vote. The Mayor spoke about the purpose of the conservation restriction and the logistics of the parameters, including a 150-foot buffer. Attorney Azadi explained the conservation restriction had been modeled after the State format. Councillor LaFauci stated the City has done a lot to protect open space and prevent over building. Councilor Stanley voiced his support for land preservation and there would be no interest in developing this parcel. Councillor Stanley moved to approve the conservation of the 6-acre Chesterbrook Woods parcel. On the motion, Councillor Dunn asked several questions about the conservation restriction, specifically why it is only 6 acres and not the entire 25 acres parcel. Councillor Dunn read a statement on behalf of the Waltham Land Trust to be included in the record (attached). Councillor Stanley reiterated that City wants to protect this parcel and the City Council can only vote on what is before them. Councillor Darcy disclosed he is a member of the Waltham Land Trust and he did not participate in any of the discussions by the Waltham Land Trust on this matter. Councillor Darcy stated his support for the 25 acres and not just the 6 acres. Councillor Harris spoke about the need to strike a balance of preserving the 6 acres and to do nothing is not right. The remainder of the 25 acres could be a discussion and decision for a later date. Councillors LaFauci and LeBlanc also voiced support for the 6 acres and to address the remaining acreage in the future. The motion of Councillor Stanley was approved on a roll call vote of 10 in favor (President Brasco, Councillors Durkee, Harris, LaFauci, LeBlanc, Mackin, McLaughlin, O'Brien, Paz & Stanley), 4 opposed (Darcy, Dunn, LaCava & Vidal) and Vice-President McMenimen presiding.

6. A communication was received from the Mayor concerning the “air rights” lease terms for the property located at 210 Moody Street. A motion was made to hear from the Mayor and the property developer, Michael Colomba. The motion was adopted on a voice vote. The Mayor explained the City now has the certified plot plan, the terms of the 99-year lease and an RFP for the 8 parking spaces. The Mayor stated she is not seeking approval but wants to know if the City Council is interested in continuing to move forward with the development project. Councillor Paz spoke about vacant properties and the need to do something with development. Councillor Paz asked several other questions about the development including its height. Councillors Mackin, Harris, O’Brien and LeBlanc also asked questions about the development project and the lease terms. Mr. Colomba spoke about his plans for the development and other impacts to benefit the downtown area of the City. President Brasco moved to support the Mayor’s plan/presentation for an agreement concerning the “air rights” lease for the property located at 210 Moody Street. The motion was adopted on a roll call vote of 13 in favor (President Brasco, Councillors Dunn, Durkee, Harris, LaCava, LaFauci, LeBlanc, Mackin, McLaughlin, O’Brien, Paz, Stanley & Vidal), 1 opposed (Darcy) and Vice-President McMenimen presiding.
7. A request was received from Vice-President McMenimen to have the Police Chief attend the COW meeting to follow up on the resolution regarding updates on the request of the City Council from June 22, 2020. President Brasco moved to hear from the Police Chief, Keith MacPherson. The motion was adopted on a voice vote. Vice-President McMenimen stated that the Chief MacPherson had provided responses to the three information requests of the Ward 9 Councillor and that they were provided by e-mail. Chief MacPherson went over his responses to each of the three information requests. Councillor Mackin asked several follow up questions to the Chief’s responses, including asking about citations by race. Councillor Mackin moved to request access to the entire Police database. On the motion, Councillor Durkee asked about the parameters of the request, stating it needed to be more specific. Councillor O’Brien asked if the database included the names of individuals and how far back is the system, to which Chief MacPherson replied 20 years. Councillor LaFauci asked if the City is open to a lawsuit by providing this information and what is attempting to be uncovered. Councillor Mackin moved to amend her original request to include the columns and rows to conduct a query of the database. The motion did not pass on a roll call vote of 1 in favor (Mackin), 13 opposed (President Brasco, Councillors Darcy, Dunn, Durkee, Harris, LaCava, LaFauci, LeBlanc, McLaughlin, O’Brien, Paz, Stanley & Vidal) and Vice-President McMenimen presiding. Councillors Vidal, Paz, McLaughlin, Stanley, O’Brien and LeBlanc expressed concern about the sensitivity of the information if released, the need to look forward and the amount of time currently being spent on public records requests. The original motion of Councillor Mackin did not pass on a roll call vote of 1 in favor (Mackin), 13 opposed (President Brasco, Councillors Darcy, Dunn, Durkee, Harris, LaCava, LaFauci, LeBlanc, McLaughlin, O’Brien, Paz, Stanley & Vidal) and Vice-President McMenimen presiding. Councillor Mackin stated that black individuals had been stopped more frequently than white individuals. Councillor Mackin moved to request the FIO in the QED data set for frequency of stop and frisk interactions, aggregate that by race, for each of the last five years. Chief MacPherson stated this would not be an extensive request. The motion of Councillor Mackin

was approved on a roll call vote of 13 in favor (President Brasco, Councillors Darcy, Dunn, Durkee, Harris, LaCava, LaFauci, LeBlanc, Mackin, McLaughlin, O'Brien, Paz & Stanley), 1 opposed (Vidal) and Vice-President McMenimen presiding. President Brasco moved to invite the Mayor to a future COW meeting to discuss the three requests of the Ward 9 Councillor. The motion was adopted on a roll call vote of 14 in favor (President Brasco, Councillors Darcy, Dunn, Durkee, Harris, LaCava, LaFauci, LeBlanc, Mackin, McLaughlin, O'Brien, Paz, Stanley & Vidal) and Vice-President McMenimen presiding. President Brasco moved to place the matter on the table. The motion was adopted on a voice vote and the matter was tabled.

8. A motion by President Brasco to adjourn was adopted on a voice vote, and the Chair declared the Committee adjourned at 10:05pm.

Paul G. Centofanti – Clerk to the Committee of the Whole

ATTACHMENT TO COW MINUTES
OF 9/21/2020 - ITEM 5

September 21, 2020

The Waltham Land Trust (WLT) urges the City to expand the proposed conservation restriction to cover the entire Chesterbrook Woods, in accordance with the history of how and why the property was purchased, and the longstanding use of this land as community open space.

While the Waltham Land Trust is generally supportive of the issuing of any conservation restrictions, the limited proposal at Chester Brook Woods was highly concerning for a number of reasons.

When the City decided to develop Jericho Hill as part of the high school project, it brought a longstanding concern of the Land Trust to the forefront. That concern is with regard to the City's acquisition of land for the stated purpose of preservation as open space, when that acquisition is then followed by the failure to unequivocally protect that land through conservation restrictions or other appropriate legal means of ensuring its permanent preservation. This was the case with Jericho Hill and is even more so with regards to Chesterbrook Woods.

The 5.97 acre portion of land in the Chesterbrook Woods that the City proposes to place a conservation restriction on to offset the negative environmental impact of developing Jericho Hill has long been held out to the people of Waltham as already being protected. As the City itself notes, it also contains certain wetlands that would limit its developability. Further, the highest conservation value is achieved by preserving interconnected and uninterrupted parcels of land which was one reason for WLT's concern about the loss of Jericho Hill. For all of these reasons, the proposed portion of the Chesterbrook Woods is not of comparable conservation value to Jericho Hill and is inadequate to serve as a mitigating substitute.

The Land Trust's longstanding position is that the entirety of Chesterbrook Woods is protected by Article 97 of the Massachusetts Constitution and is not subject to development. WLT disagrees with the City's assertion in the FEIR that the deed to a particular parcel conclusively determines its status. By this standard almost none of Waltham's open space would be considered actually protected.

However, the Massachusetts Supreme Judicial Court addressed this issue in *Smith v. City of Westfield*, 478 Mass. 49 (2017) and found that land that was not legally restricted through a deed or conservation restriction was nonetheless protected by Article 97. This protection was acquired through the land being held out to the public as community open space protected from other uses and the public in fact using it as such.

With regard to the Chesterbrook Woods, the entire parcel was purchased for, and presented to the public as, a continuation of the Storer Conservation Land. The 2001 acquisition of the Chesterbrook Woods was based on the recommendations of the City's Committee to Study Land Acquisition for the Preservation of Open Space and the City's stated intent of the purchase was clearly for preservation of the land as open space. Mayor David Gately's September 27, 2001 acquisition map clearly indicates the Chesterbrook Woods was added to the Storer Conservation Land and that the trails would be extended to provide a combined open space of 138.5 acres. Indeed, the public has been using it as open space ever since. In reaching the conclusion that this land is protected, WLT has also relied on its members' firsthand knowledge, various City documents, and extensive contemporaneous media reports.

The Land Trust is far from alone in its position as to the protected nature of the Chesterbrook Woods. When this parcel was under possible consideration as an alternative high school site in spring 2018, the following groups all expressed their agreement that the Chesterbrook Woods has Article 97 protection.

- Friends of Stonehurst/The Robert Treat Paine Historical Trust
- Trustees of Reservations
- Massachusetts Land Trust Coalition
- Preservation Massachusetts
- Historic New England
- The New England Chapter of the Society of Architectural Historians
- National Association for Olmstead Parks

As WLT has noted, in our prior comments WLT has generally supported the location of the High School at 554 Lexington Street. This was in large part because the organization recognizes both the unique and urgent need for a new high school, and because it became clear as more information emerged over the past several years that this land was at high risk of being sold to a private developer – an outcome which could have had an even more detrimental environmental impact. WLT also supports the City's desire to repurpose the existing high school to meet other educational infrastructure needs so that further development of Waltham's open space can be prevented. At the same time, the high school process has highlighted the need for a clearer dialogue about what land in the City is truly permanently protected for conservation purposes.

The Land Trust's mission is to preserve land for the next generation of Waltham, the very same children who will be served by the new high school. It is vital for the City to demonstrate that it truly understands permanent land conservation is also critical and essential to Waltham's future being a healthy one. That requires the acknowledgment that there will always be competing land use needs in our community and taking the necessary steps now to legally permanently protect the land the City has already presented as such. This will resolve community misunderstanding and ensure conservation does not take a back seat in the future.

The Waltham Land Trust, and the community at-large, have relied on the City's repeated indications that all of the Chesterbrook Woods was purchased for the purposes of its permanent preservation as open space. The City also previously indicated that a conservation restriction would be placed on the entire parcel, as documented in its own plans.

For these reasons, WLT urges the City to fulfill its own prior commitments to everyone in Waltham by protecting not just some, but all of the Chesterbrook Woods, with a conservation restriction. The Land Trust leadership stands ready to work with you to do so.