

FRANKLIN STREET LAND IN DISPUTE

FREQUENTLY ASKED QUESTIONS

Prepared by City Solicitor Elizabeth Rennard, March 16, 2020

This FAQ has been prepared to answer questions relative to a piece of land both the City and an abutter, the Ferris family, claim to own. This land, referred to as “land in dispute,” is currently occupied by Ferris and is included with adjacent land owned by Ferris that is together subject to a previously approved housing development plan proposed by Juniper Point Investment Co. (hereinafter “developer”).

1. What exactly is the land of in dispute?

The land in dispute is a piece of filled tide land approximately 25,857 square feet currently shown on the City Assessor’s Map as part of the City property at 20 Franklin Street, but which has been occupied by the Ferris family as part of their auto salvage business since the 1950s. See Exhibit A which shows 20 Franklin Street outlined in yellow with a red dividing line separating out the land in dispute. The exact timing and nature of the historical filling of the land in dispute is unknown. This City brought suit against Ferris in 1982 to reclaim the land in dispute and Ferris defended the suit arguing they acquired the land through adverse possession (20 years of open, continuous, exclusive, adverse and notorious use). The case was dismissed without prejudice in 1986 for the failure of the City to prosecute. Today, Ferris pays taxes on the use of the land, continues to occupy it and claims title to it. See Timeline attached as Exhibit B.

2. Is the land in dispute park land?

The City has determined that a portion of the land in dispute is dedicated park land. This dedicated park land is approximately 10,560 square feet and is shown on an aerial photograph with an overlay of the Morse Plan which accompanied the City Council’s 1926 dedication of this land for park purposes. See Exhibit C. A plan, attached hereto as Exhibit D, shows the dedicated park land as Lot A. The balance of the land in dispute, shown as Lot B, is approximately 15,297 square feet and is not part of the 1926 park land dedication. Note: this plan was prepared by the developer and will be verified for accuracy by a City engineer prior to any final action relative to the land in dispute.

3. Why does the Ferris family believe they own the land?

The Ferris family believe they are owners of the entire land in dispute through a claim of title by adverse possession. Ferris asserts that they have sufficient evidence to prove all the elements of adverse possession prior to the change in Massachusetts law preventing adverse possession against a municipality. It is the City position that adverse possession cannot run against the portion of the land in dispute that is dedicated park land because it is protected by Article 97 of the Massachusetts Constitution, which requires a 2/3 vote of the State Legislature for conveyance or a change of use from park land.

4. Is the land contaminated?

Yes. A study prepared by SP Engineering on behalf of the developer found petroleum compounds and gray ash with metals requiring remediation on the Ferris property and the land in dispute. High levels of lead were identified on Lot A, the portion of the land dedicated for park purposes. SP Engineering noted that the material found, particularly the area closest to the street and within the area in dispute, are consistent with a municipal incinerator landfill that once operated at the site. SP Engineering has filed with DEP as required by law. Ownership of the land in dispute must be resolved soon as DEP is requiring the owner(s) to submit additional reports and a cleanup plans.

5. Have city officials met with the Ferris family and/or the proposed developer or their legal counsel to discuss a resolution to this dispute?

Yes. Both the developer and the Ferris family have expressed an interest in resolving this land dispute.

6. Is there a resolution whereby the City could sell the land in dispute?

Yes, the sale of this parcel is a viable resolution. The sale process differs for park land and non-park land. At a minimum, however, no City land may be sold without an extensive public process including a 2/3 vote of the City Council, approval of the Mayor and a valuation of the property. Sale of park land also requires replacement of the park land, approval of the Park and Recreation Commission and a 2/3 vote of the State Legislature.

7. The City applied for a PARC grant in 2008 and with its application submitted a plan showing proposed improvements to Furlong Park including the land in dispute. Doesn't that action indicate the entire land in dispute is park land?

No. While the initial application for grant funding include a schematic, based on the City's Assessor Map, that included the land in dispute, neither the City Council Order authorizing acceptance of the grant or the approved plans, shown in Exhibit E as an overlay on a City aerial map, included the land in dispute.

8. A proposed developer has received approval to construct housing on the site that includes the land in dispute. If this developer is unable to acquire the land in dispute, will the project move forward?"

Yes. While maintaining their claim that Ferris owns the land in dispute, at this time, the developer plans to move forward with or without the land in dispute. On March 19, 2020 the developer will be before the Planning Board for a modification of their plan. See Exhibit F, the developer's proposed modified plan which incorporates all units onto land for which Ferris has clear title.