

Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS

No. SJC-13865

EMERALD NECKLACE CONSERVANCY, INC., et al.,
Plaintiffs-Appellants,

v.

CITY OF BOSTON, et al.,
Defendants-Appellees.

**Amicus Curiae Brief of
Olmsted Network**

**William Bell, Esq.; Friends of Olmsted-Beil House;
Austin Allen, PhD, ASLA, Principal, DesignJones;
Friends of the Parks; Olmsted Linear Park Alliance;
Olmsted Parks Conservancy**

In Support of Appellants and Reversal

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IDENTITY OF AMICI CURIAE

Amicus Curiae Olmsted Network, 1763 Columbia Rd NW, Ste 175, PMB 590808, Washington, DC 20009, is a national nonprofit organization dedicated to the stewardship, preservation, and continued public use of landscapes designed by Frederick Law Olmsted, his sons, and the Olmsted firm. Its network includes public agencies, park conservancies, practitioners, scholars, and community advocates responsible for hundreds of historic public parks and landscapes across the United States. Founded in 1980, the Olmsted Network became the first national organization focused on protecting parks designed by Frederick Law Olmsted and the Olmsted firm. These places suffered from underappreciation and were in disrepair and decay. To address this issue, the organization helped foster the emergence of park conservancies, friends' groups, and citizen volunteers to preserve neighborhood parks. For nearly half a century, Olmsted Network has raised awareness through educational outreach and engaged in rapid-response advocacy across the country. The U.S. Postal Service produced an Olmsted stamp (1999) and the National Park Service established Olmsted's home and office in Brookline, Fairsted, as the Frederick Law Olmsted National Historic Site (1979).

Amicus Curiae William Bell, Esq. is a member of the Bar in New York and the Vice President of Friends of Olmsted-Beil House, which is affiliated with the

Olmsted Network. He has extensive experience with the preservation of Olmsted landscapes.

Amicus Curiae Friends of Olmsted-Beil House (FOHB) - Staten Island, New York is a charitable organization under Section 501(c)(3) of the Internal Revenue Code. Its mission is to protect, preserve, and present the Olmsted-Beil House historic site. FOHB is a member of the Olmsted Network.

Amicus Curiae Austin Allen, PhD, ASLA is a Principal of DesignJones LLC, a Landscape Architecture firm dedicated to ecology, culture, urban environments, and the celebration of community, history and knowledge through creative planning, design, and innovative technology.

Amicus Curiae Friends of the Parks - Chicago, Ill.

For more than 50 years, Friends of the Parks (FOTP) has championed Chicago's parks and open spaces. FOTP works to preserve, protect, and expand green spaces so that every community can thrive. FOTP was born to fight against exclusion and give communities a real voice in their parks.

Amicus Curiae Olmsted Linear Park Alliance - Atlanta, Ga

The Olmsted Linear Park Alliance (OLPA) was established in 1997 as a 501(c)(3) charitable nonprofit organization. The mission of the organization is to protect and preserve the Olmsted Linear Park by engaging and educating the public to treasure and invest in the improvement of this historic, landmark asset, and to champion the

teaching and legacy of Frederick Law Olmsted in creating thoughtful, well-designed greenspace to enhance urban living.

Amicus Curiae Olmsted Parks Conservancy - Louisville, Ky

Olmsted Parks Conservancy's mission is to restore, enhance and forever protect Louisville's Olmsted-designed parks and parkways, connecting nature and neighborhood while strengthening the community's well-being. Our vision is to elevate our parks to bring the restorative power of nature to all.

INTEREST OF AMICI CURIAE

The Olmsted Network partnered with other national organizations in Frederick Law Olmsted's bicentennial celebration — Olmsted 200: Parks for All People --- to celebrate Olmsted's living legacy and mark his 200th birthday in 2022, joining with policy makers, public health professionals, community leaders and advocates to explore the many ways in which Olmsted's values are relevant to 21st century America.

All of the Amici share a mission of championing Olmsted parks, places and principles through advocacy, education and stewardship. Their vision is a world where communities are enriched by healthy, safe and inclusive green spaces inspired by the thoughtful advancement of Olmsted work and principles. They work to provide educational resources and respond to threats against Olmsted parks and places. This case presents fundamental questions about the durability of

Massachusetts’ historic protections for public parkland, the answers to which will potentially impact the activities of all the Amici Curiae.

RULE 17 (c) (5) DECLARATION

Amici and their counsel state that: (A) No party or party’s counsel authored this brief in whole or in part; (B) No party or party’s counsel, or any other person or entity, other than the amici, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief; and (C) Neither the amici nor its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

ARGUMENT

INTRODUCTION

Issues Addressed and Position of Amici

The Court requested amicus briefs on six issues. Amici will address three of those issues, namely: “Whether the trial court erred in: (2) concluding the evidence insufficient to show that the parcel of land at issue, which includes White Stadium and the surrounding area in Boston’s Franklin Park, was protected by Article 97 of the Amendments to the Massachusetts Constitution and G. L. c. 3, § 5A; (3) concluding that the defendants did not violate G. L. c. 45, § 7; ... [and]... (5)

declining to address whether legislative approval was required pursuant to art. 97 for any effect on other sections of Franklin Park.”

Amici Curiae support and adopt by reference the arguments on these issues made by the Plaintiffs-Appellants in their Brief and Reply Brief.

I. THE TRIAL COURT ERRED IN CONCLUDING THAT THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH ARTICLE 97 PROTECTION FOR THE STADIUM PARCEL IN BOSTON’S FRANKLIN PARK.

The proposed White Stadium project to lease land to and create a facility in Franklin Park for the benefit of a Commercial Professional Soccer Team is an affront to the values that Frederick Law Olmsted sought to advance with the Emerald Necklace. Amici urge the Court to consider the broader ramifications of this case for the protection of public parkland, and the stewardship obligations owed by the Commonwealth and the City of Boston to present and future generations. The decision below should be reversed.

Franklin Park is among the most significant of the Olmsted landscapes. Franklin Park was acquired by eminent domain under the 1875 Parks Act for park purposes and has continuously functioned as such for more than a century. Amici contend that Article 97 of the Massachusetts Constitution and longstanding precedent require legislative approval before such land—or land functionally integral to it—may be diverted to non-park commercial uses, and that the trial court erred in denying the relief sought by the Plaintiffs.

Massachusetts law has consistently recognized that public parks are held in trust for the benefit of the public. Land taken for park purposes may not be diverted to other uses, absent clear legislative authorization. *Higginson v. Slattery*, 212 Mass. 518, 520–21 (1912). This principle was incorporated into Article 97 of the Massachusetts Constitution, requiring legislative approval by a two-thirds vote for any disposition or change in use of public land acquired for conservation or recreation purposes. These protections reflect the Commonwealth’s recognition that public parks serve essential civic, environmental, and health functions.

The defendants sought successfully in the proceedings below to treat White Stadium as a distinct and separate parcel, describing it as a schoolyard with no connection to Franklin Park. Yet the history of the design and construction of Franklin Park shows indisputably that the area was originally incorporated as an essential element of the park. Ethan Carr, *BOSTON’S FRANKLIN PARK*, Olmsted, Recreation, and the Modern City (2023). The deed transfer and the White Fund construction were for purposes consistent with Olmsted’s design principles for parks. White Stadium was erected expressly for the benefit of all Boston’s public-school students and Shattuck Hospital served the entire surrounding community contributing directly to public health and well-being. Thus, even these non-original elements are faithful to the values Olmsted had in mind in creating Franklin Park years before.

There is a clear distinction between evolution in keeping with the Olmsted spirit and money-making schemes that use public land for private profit. The Court below properly found that “the City and BPS have failed in their responsibility to maintain White Stadium.” But many of Olmsted’s parks have suffered such neglect and have been restored by governments and public-spirited organizations like the Amici. It is utterly unacceptable to attempt to use governmental mismanagement as a justification for inflicting further harm on the public good by conveying public property rights to private parties for commercial gain. Permitting such a project without legislative approval under Article 97 would invite erosion of the public’s constitutional rights through administrative reclassification and piecemeal encroachment. The Court should reaffirm that public park protections apply based on real-world impacts, not labels, and reverse the lower court’s ruling that Article 97 and G.L. c. 45, § 7 do not apply in this case.

II. THE TRIAL COURT ERRED IN DECLINING TO ADDRESS THE PROTECTIONS APPLICABLE TO ADJACENT PARKLAND.

The City of Boston seeks to avoid these protections by characterizing the White Stadium site as a “schoolyard.” Even if that description were both true and complete, this argument would fail. The White Stadium site lies at the geographic and functional heart of Franklin Park, within the Playstead—the park’s most heavily used and publicly accessible area. The stadium parcel is an inholding completely surrounded by Franklin Park’s approximately 500 acres. The premise

that the park as a whole will remain unaffected because the building footprint lies within an inholding elevates form over substance and undermines Article 97's purpose.

An inholding cannot be developed for intensive private use without lawful access. Development of such a large, semi-private professional sports facility cannot occur without substantial and ongoing impacts to surrounding parkland, including access, utilities, circulation, and construction staging. Here, the City has identified no easement, right-of-way, or other legal entitlement permitting construction access, utility installation, construction staging, or operational use that does not traverse surrounding parkland. An 11,000-seat professional stadium is not self-contained. Its construction and future operation will necessarily require repeated and material use of adjacent land for transportation, pedestrian circulation, emergency access, utilities, and maintenance. Without legislative authorization, such private commercial use constitutes an impermissible change in use for extensive areas of constitutionally protected parkland.

The City has never presented a comprehensive analysis of these impacts on parkland surrounding the stadium parcel. The record reflects likely impacts to park pathways, open space within the Playstead, subsurface land for utilities, and circulation patterns serving a private commercial enterprise. Allowing such

changes without legislative approval would permit the gradual erosion of protected parkland through ancillary uses and infrastructure, contrary to Article 97.

The Court should reaffirm that Massachusetts' protections for public parkland are substantive, durable, and not subject to evasion through administrative labels or fragmented analysis. Where the proposed lease and development of White Stadium for commercial uses necessarily impacts Franklin Park as a whole, the project cannot proceed without legislative approval pursuant to Article 97. The trial court erred in declining to determine whether legislative approval was required for impacts beyond the stadium parcel.

CONCLUSION

For the foregoing reasons, the Amici Curiae respectfully request that the Court reverse the judgment below and remand for entry of the relief sought by the Plaintiffs or a new trial.

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE
WITH APPELLATE RULES 17 AND 20**

Undersigned counsel hereby certifies that this brief complies with Appellate Rule 17 and with the rules of court that pertain to the filing of briefs, including, but not limited to: Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). Compliance with the applicable length limit was ascertained by using the proportionally spaced font Times New Roman size 14 to create 1,853 non-excluded words, as determined Microsoft 365 version of the word-processing program used.

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CERTIFICATE OF SERVICE

I certify that on the 18th day of March, 2026, I served the foregoing brief on the parties in this matter by electronic delivery via the efileMA system to their attorneys of record or, if such attorneys are not registered with efileMA or if such parties are *pro se* and not registered with efileMA, via e-mail.

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ADDENDUM

**ADDENDUM
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ARTICLE 97

Article XCVII. Article XLIX of the Amendments to the Constitution is hereby annulled and the following is adopted in place thereof: - 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. In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes. 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.

Section 7: Erection of buildings in parks

Section 7. Land 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, except in parks in Boston and in parks comprising less than one hundred acres in extent, structures for shelter, refreshment and other purposes may be erected of such material and in such places as, in the opinion of the fire commissioners, if any, do not endanger buildings beyond the limits of such park. The superior court shall have jurisdiction in equity, upon petition of not less than ten taxable inhabitants of the city or town in which such common or park is located, to restrain the erection of a building on a common or park in violation of this section.