

JOHN E. NICKOLS v. COMMISSIONERS OF MIDDLESEX COUNTY

SUPREME JUDICIAL COURT OF MASSACHUSETTS

166 N.E.2d 911, 341 Mass. 13

May 3, 1960

Deeds of gift to the Commonwealth of lands comprising almost all the shores of historic Walden Pond, "an American literary shrine," given and accepted under St. 1922, c. 499, in 1922

when the pond was still essentially in its natural state as a beautiful, secluded "forest lake" in a rural area, and providing that the granted lands

were "subject to the restriction and condition" that they should not be used for certain stated amusement activities commonly carried on at beach resorts, "it being the sole and exclusive purpose of . . .

aid the Commonwealth in preserving the Walden of Emerson and Thoreau, its shores and nearby woodlands for the public who wish to enjoy the pond, the woods and nature, including bathing, boating, fishing and picnicking,"

construed as imposing a predominant public trust or obligation to preserve the pond area in its natural state so far as practicable

and yet authorizing "bathing, boating, fishing, and picnicking," and provision of facilities therefor, of a nature and in a manner consistent with such primary objective of the donors.

These deeds each provided that the "parcels are . . . subject to the restriction and condition that no part of the premises shall be used for games, athletic contests, racing, baseball, football, motion pictures, dancing, camping, hunting, trapping, shooting, making fires in the open, shows or other amusements such as are often maintained at or near Revere Beach and other similar resorts,

it being the sole and exclusive purpose of this conveyance to aid the Commonwealth in preserving the Walden of Emerson and Thoreau, its shores and nearby woodlands for the public who wish to enjoy the pond, the woods and nature, including bathing, boating, fishing and picnicking."

commissioners planned to build a paved concrete ramp or ramps from an existing parking area to the beach;

widened the beach, from a width of eight to ten feet to one of fifty feet, "by cutting down the embankment" on the pond shore from a "grade of about four-to-one, to a grade of about two-to-one, and using the excavated material to fill in the pond [under water] for a distance of eighty-five or ninety feet out from the then existing water's edge";

built additional parking spaces involving substantial cutting of trees and provided access to the pond by a road for fishermen;

and planned to build a concrete bath house about one hundred feet long "at the bottom of the slope close to the new beach," which already has involved the cutting of about twenty-five substantial trees.

enjoin the commissioners from "altering or destroying the shores and nearby woodlands of [the pond] by the erection of bath houses and the construction of paved roadways to the shore"

and require them "to preserve the shores and nearby woodlands . . . and to observe the . . . purposes of the gifts and conveyances."

question for decision is whether the commissioners are under a public duty, because of the deeds, their acceptance

contend that the purpose was not to preserve the pond and nearby woodlands in their natural state.

Property conveyed to a governmental body, a corporation, or trustees for particular public purposes may be subject to an enforceable general public obligation or trust to use the property for those purposes.

where property is dedicated to a public use for a particular purpose, it cannot without the exercise of eminent domain, be put to a use of a different character, in disregard of the trust and the rights of the donors

whether a gift, subject to a "condition" or stating a "purpose," imposes a trust or obligation is a matter of interpretation of the particular instrument and determination of the particular donors' intent.

The intention of these grantors, and of the Legislature in authorizing acceptance of the deeds

ascertained from a study of the instrument as a whole in the light of the circumstances attending . execution. Search should be made for a general plan designed to express a consistent and harmonious purpose.

'Walden,' and Ralph Waldo Emerson's prose and verse have made it well known has attracted a great number of tourists, nature lovers and others who have come to enjoy the fishing, swimming, bird watching and walking through its beautiful woodland."

The pond, a great pond (G. L. c. 91, §§ 18A, 19, 19A, 35), covers "about sixty-one acres . . . and one and seven-tenths miles in circumference." It is "encircled by hills which rise steeply from the water's edge." These are covered "by a forest of pines, hickories, oaks, birches, alders, aspens, maples and other trees. . . . There are sandy beaches suitable for bathing . . . , the most accessible being at the easterly end."

Beginning in 1845, Thoreau "lived . . . two years in a hut among the trees . . . on the northerly shore." In "Walden," as quoted by the auditor, Thoreau described the pond as a place of singular beauty with "few traces of man's hand to be seen." Then, "there were no buildings" except his hut and possibly another.

accepted the deeds to the Emerson and Heywood grants, "subject . . . to the restrictions and conditions imposed under said deeds." "

In 1922 Walden Pond was still a beautiful forest lake. . . . here were no discernible breaks in the growth of trees and shrubbery. No roads led to . . . the shores at any . . . point."

The "Walden of Emerson and Thoreau" was a "forest lake" in a simple rural area.

The "restriction and condition" of the deed against certain sports, amusements, and other activities were appropriate methods of preserving the pond as nearly as possible in its then state and of accomplishing the "sole and exclusive" purpose.

support to the view that the grantors' predominant purpose was to preserve the pond area in its natural aspect and character as associated with Emerson and Thoreau as far as was then practicable in a later period of time.

By referring to the surroundings of Revere Beach, also, we think that the donors were indicating by contrast their intention that the pond area should remain free from artificial intrusions.

We hold that the predominant obligation imposed by the deeds was the preservation of the pond area as closely as practicable in its state of natural beauty.

Nevertheless, we do not forget that the deeds authorized "bathing, boating, fishing, and picnicking." These words also must be given some significance and reconciled, so far as possible, with the donors' dominant purpose.

Although the principal concern of the donors was the preservation of the Walden of Emerson and Thoreau, they plainly did not intend Walden Pond to be only an outdoor museum, merely to be looked at by visitors.

This interpretation permits necessary maintenance, policing, removal of fallen trees, planting of new trees, repair of erosion and damage by visitors, and carefully planned and placed, well concealed, inconspicuous construction of essential structures.

On the other hand, this interpretation requires that structures, roads, vehicles, and concessions shall not be placed on the shores and adjacent woodland area in a manner and to an extent inconsistent with the donors' primary purpose.

This interpretation of the deeds gives appropriate significance to all of the words stating the conditions and purposes of the conveyances and the obligations thereby imposed.

In view of these findings we hold that construction of the ramps in this manner was in violation of the deeds,

ramps must be removed or modified in a manner which will eliminate them as a substantial obstacle to reforestation and minimize the injury caused to the natural appearance of the area.

the gravel road has not been shown to be in violation of the deeds, even though any road leading to the shores, if not carefully planned and concealed, is likely to change the area's character and appearance.

locate the new bath house on the beach would mar the beauty of the shore."

such construction on the beach, in the absence of appropriate arrangements for its effective concealment among trees, would be in violation of the deeds.

To the extent that this parking space involved tree cutting, particularly of "part of the screen that made" the State highway "invisible from the pond," there was, we hold, violation of the deeds.

Reasonable efforts to conceal the parking area, by replanting of trees at its borders, must be undertaken, in order that there may be compliance with the terms of the deeds.

Performance of the obligations imposed by the deeds, we think, requires that, in orderly course, such replanting and erosion prevention be undertaken.