

You have requested an opinion regarding whether the installation of an ice machine and shack to provide shelter to the ice machine on Mayo Beach would be a violation of the recreational use restriction on the deed. You have advised that the ice would be available for purchase by all users of the beach. In my opinion, installation of an ice machine is consistent with recreational use of the property.

The deed from the Trustees of the Captain L.D. Baker Estate to the Town dated April 1, 1931, and recorded in the Barnstable County Registry of Deeds at Book 549, Page 121, (the “Deed”) provides, “[t]his conveyance is made on the express condition that the premises shall be forever used as a public Town Park for bathing and other recreational uses and for no other purpose, and shall always be maintained by the grantee in a reasonably neat condition.”

The property may also be subject to the protections of Article 97 of the Articles of Amendment to the Constitution of Massachusetts (“Article 97”), which applies to land “taken or acquired” for “conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources.” Once land is acquired for an Article 97 purpose, it is permanently protected for that particular purpose unless the General Court votes by a 2/3 vote of each house to remove such protection. Additionally, Article 97 can apply to land that was not originally acquired or taken specifically for an Article 97 purpose. In Hanson v. Lindsay, 444 Mass. 502 (2005), a case involving unique facts, the Court indicated that if land owned by a municipality is bound by a permanent deed restriction or conservation restriction, limiting the use of the land to an Article 97 Purpose, such land could be deemed to be subject to Article 97. Thus, even though the Town did not acquire the property for an Article 97 purpose, it is important to keep in mind that it may nonetheless be subject to it because the property has been used exclusively for recreational purposes.

Under either analysis, it is my opinion that the installation of an ice machine does not constitute a change in the recreational use. Rather, it is my opinion that an ice machine is consistent with the use of a Town park and for “bathing and other recreational uses.” Ice is a common necessity for beachgoers or picnickers. Thus, the presence of an ice machine in effect supplements the permitted use rather than changes it. In my opinion, an ice machine is an accessory use similar to restrooms, water fountains, parking, etc. It is a service that compliments and promotes the recreational use of the property. The fact that ice is offered for sale does not change my opinion, as this is no different than an ice cream truck selling ice cream at the beach or the Town charging a fee for parking. Further, in my opinion, this remains true even if commercial shell-fishermen also happen to purchase ice from the machine.

Let me know if you have any further questions.

Thank you,

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