

EDWARD J. McCORMACK, Attorney General

BILL IN EQUITY

Respectfully represents your Petitioner.

1. That the petitioner is a municipal corporation located in the County of Worcester in this Commonwealth.
2. That the respondent is a constitutional office of this Commonwealth with a principal office in the County of Suffolk.
3. That the General Court in 1960 enacted a statute (Acts of 1960, chapter 121) a copy of which is hereto attached marked "A", permitting your petitioner to use certain of its park land known as Newton Hill for school purposes, said land being presently under the control and jurisdiction of your petitioner's Parks and Recreation Commission.
4. That said park land known as Newton Hill was acquired by the petitioner in the year 1888 by the then Board of Park Commissioners by a taking under eminent domain proceedings of two parcels of land and by the purchase of three additional parcels of land by said Board all of which parcels being contiguous constitute Newton Hill.
5. That said Newton Hill and parcels are shown in the City of Worcester 1886 Atlas, page 23, a copy of which is hereto annexed marked "B". The first parcel described in a deed from John W. Wetherwell to the City of Worcester dated June 1, 1888 and recorded in the Worcester District Registry of Deeds, Book 1266, Page 642, has an area of approximately 15,088 square feet. The second parcel described in a deed from John W. Wetherwell to the City of Worcester dated June 1, 1888 and recorded in the Worcester District Registry of Deeds, Book 1266, Page 644, has an area of approximately 45.77 acres. The third parcel described in a deed from William S. Lincoln to the City of Worcester dated June 4, 1888 and recorded in the Worcester District Registry of Deeds, Book 1266, Page 648, has an area of approximately



10.25 acres. The fourth parcel taken by eminent domain by the Board of Park Commissioners from Nathan S. Johnson by an order dated May 28, 1888 and recorded in the Worcester District Registry of Deeds Book 1266, Page 647, has an area of approximately 117,522 square feet. The fifth parcel of land was taken by eminent domain by the Board of Park Commissioners of the City of Worcester from Chauncy G. Harrington by an order dated June 4, 1888 and recorded in the Worcester District Registry of Deeds, Book 1266, Page 648, has an area approximately 36,000 square feet of land.

6. That the petitioner in the year 1888 paid to John W. Wetherwell the owner of parcel 1 and 2 the sum of \$25,000.00 for said parcels deeded to the City of Worcester; and paid to William S. Lincoln in the year 1888, the sum of \$12,500.00 for parcel 3 deeded by him to the City of Worcester; that Court proceedings for the taking of parcel 4 resulted in the petitioner paying to Nathan Johnson in the year 1890 the sum of \$9,843.97; and similar Court proceedings for the taking of parcel 5 resulted in the petitioner paying to Chauncy G. Harrington in the year 1890 the sum of \$2,743.74.

7. That since 1888 Newton Hill has been held by your petitioner for park purposes except that as to two parcels of said Newton Hill the General Court of this Commonwealth permitted your petitioner to devote a portion of Newton Hill, fronting on Park Avenue, for the erection of a fire alarm station (Acts of 1914, chapter 574) and in 1934 permitted your petitioner to use a 25 foot strip fronting on and running along Pleasant Street, for street widening purposes (Acts of 1934, chapter 27).

8. That for the past 30 years the general public has made little or no use of Newton Hill for usual park purposes and except for a tennis and basketball area located at the intersection of Highland Street and Pleasant Street, and a memorial monumental area located at the intersection of Park Avenue and Highland Street, about the only public use of Newton Hill has been by the Members of the Audubon Society.



9. That some time in 1908 your petitioner received a gift in trust from the Estate of William A. Richardson, a former Parks Commissioner of the City of Worcester, of about \$238,000.00. Under the terms of said trust the corpus of the gift was to remain intact and the income used for the public parks of the City of Worcester, a copy of said will is hereto annexed marked "C". Certain restrictions in the will were imposed on the use to be made of Elm Park and Newton Hill. This gift in Trust was accepted by the petitioner in 1908 and the income has been used annually by the petitioner for park purposes.

10. That no provision of the Richardson Trust prohibits the petitioner from erecting a school building on said Newton Hill; and in the use of the land for a school, no animals will be kept in captivity nor will additional public roads be laid out and constructed on Newton Hill.

11. That the proposed school location of the petitioner comprises about twenty acres out of a total of sixty-five acres of Newton Hill said proposed site fronting on Highland Street and lying Easterly of the tennis court and basketball area located at the intersection of Highland and Pleasant Streets and Westerly of the memorial area located at the intersection of Highland Street and Park Avenue. An aerial photograph of Newton Hill with the proposed layout of the new school site superimposed thereon is hereto attached marked "D".

12. That on June 20, 1960 the Worcester City Council duly authorized the City of Worcester to use Newton Hill for school purposes in accordance with the provisions of the Acts of 1960, chapter 121, certified copy of said vote is hereto attached marked "E".

13. That on July 12, 1960 the Parks and Recreation Commission of the City of Worcester voted to authorize the City of Worcester to use Newton Hill for school purposes in accordance with the provisions of chapter 121, Acts of 1960, a copy of which vote is hereto annexed marked "F".



14. That in accordance with the provision of chapter 121, of the Acts of 1960 a decree of this Honorable Court is required by your petitioner to use Newton Hill for school purposes.

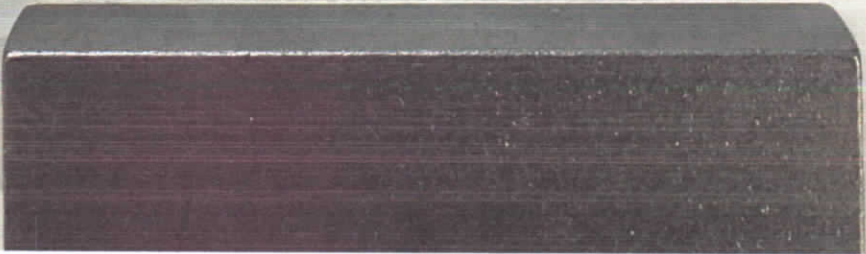
WHEREFORE YOUR PETITIONER PRAYS THAT

1. This Honorable Court enter a decree authorizing the City of Worcester to use for school purposes any part or parts of certain land in the City of Worcester known as Newton Hill bounded on the North by Highland Street, on the South by Pleasant Street, on the East by Park Avenue and on the West by Newton Square presently held by your petitioner for park purposes.

2. For such other and further relief as to this Honorable Court may seem meet and just.

CITY OF WORCESTER

By Francis J. McGrath  
Francis J. McGrath  
City Manager





COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Supreme Judicial Court

No. 68837 Equity

CITY OF WORCESTER

vs.

EDWARD J. McCORMACK, Jr., ATTORNEY GENERAL

ANSWER OF THE ATTORNEY GENERAL

Now comes the respondent Attorney General and for answer says:

1. He admits the allegations contained in paragraph 1.
2. He admits the allegations contained in paragraph 2.
3. He admits the allegations contained in paragraph 3.
4. He admits the allegations contained in paragraph 4.
5. He admits the allegations contained in paragraph 5.
6. He admits the allegations contained in paragraph 6.
7. He admits the allegations contained in paragraph 7.
8. He admits the allegations contained in paragraph 8.
9. He admits the allegations contained in paragraph 9.
10. He admits the allegations contained in paragraph 10.
11. He admits the allegations contained in paragraph 11.
12. He admits the allegations contained in paragraph 12.
13. He admits the allegations contained in paragraph 13.
14. He admits the allegations contained in paragraph 14.

WHEREFORE YOUR RESPONDENT PRAYS THAT

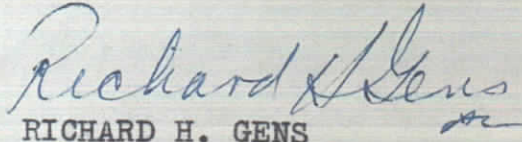
1. This Honorable Court enter a decree authorizing the City of Worcester to use for school purposes any part or parts of certain land in the City of Worcester known as Newton

Hill bounded on the North by Highland Street, on the South by Pleasant Street, on the East by Park Avenue and on the West by Newton Square presently held by your petitioner for park purposes.

2. For such other and further relief as to this Honorable Court may seem meet and just.

EDWARD J. McCORMACK, Jr., Attorney General

By



RICHARD H. GENS  
Assistant Attorney General





CITY OF WORCESTER  
MASSACHUSETTS

HARRY J. MELESKI  
CITY SOLICITOR  
HENRY P. GRADY  
ARTHUR F. KOSKINAS  
ANDREW F. MCCARTHY  
STANTON H. WHITMAN  
ASST. CITY SOLICITORS

MAX FELDMAN  
COMPENSATION AGENT  
GEORGE CALLAHAN  
CLAIMS INVESTIGATOR

March 15, 1961

Chester A. Dolan, Jr., Clerk  
Supreme Judicial Court  
1404 Court House  
Pemberton Square  
Boston, Massachusetts

In re:- City of Worcester vs. Attorney General  
Supreme Judicial Court In Equity No. 68837

Dear Sir:-

I wish to advise that a copy of the Decree,  
description and plan were recorded at the Worcester District  
Registry of Deeds on March 10, 1961, Inst.No. 5547 and being  
Book 4178, Page 415, Plan Book 254, Plan 72, in accordance  
with the requirements of the decree.

Yours very truly,

*Henry P. Grady*  
Assistant City Solicitor

H.P.Grady/gm