

# Belmont Citizens Forum

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A Newsletter for Belmont Residents

January 2000

## *Redesign of Belmont Center Proposed*

*By Jane Sherwin*

Belmont's Traffic Advisory Committee (TAC) is discussing major changes in Belmont Center to make the area more appealing to shoppers and safer for pedestrians. According to Committee Chair Mark Paolillo, these changes would give Belmont Center some of the advantages of a mall without actually turning it into one.

Plans presented by traffic consultant Charlie Kalaskas of the BSC Group call for wider sidewalks, shorter crosswalks, and new landscaping as well as a larger parking lot behind the center on Claffin Street. New curb extensions at the corners would encourage cars to slow down and make the area a pleasant place to walk, shop, and linger.

If this project is successful, it is more likely that similar improvements would be made in other parts of town, fulfilling the Traffic Committee's mission to increase pedestrian safety, slow speeding cars, and reduce cut-through traffic.

### *Leonard Street*

The proposed redesign would narrow Leonard Street and create chokepoints, or "neck-downs," at each crosswalk by extending the curbing out into the street at those points. This change dramatically decreases the distance pedestrians must go when crossing the street.

A new crosswalk would extend from Frankie's Catch of the Day to the triangle park in front of Belmont Savings Bank and from there to the bank, making it easier for people to reach the train station and the Town Hall. The wider and broader sidewalks

might even encourage people to walk to the center and leave their cars behind.

### *Under the Railroad Bridge*

There is also some interest in taming the free-for-all under the railroad bridge by limiting car turns at the intersection of Concord, Channing, and Leonard during rush hours. Allowing only right turns from Concord (near the Belmont Savings Bank) and from Channing might alleviate much of the confusion at that intersection. This move would increase the traffic on surrounding residential streets, however. Cars approaching the railroad bridge on Channing Road, for example, would be shifted to Alexander Avenue, resulting in an increase of approximately 300 cars per hour on Alexander between Cross

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# *The Belmont Citizens Forum: Our Mission*

*By Lynne Polcari*

To understand the mission statement of the Belmont Citizens Forum, one must go back to the dog days of August 1999, when a diverse group of Belmont citizens, both yes and no voters in the July referendum, came together. We were linked by a large web of common friends, and, more importantly, by our dissatisfaction with the public process throughout the McLean rezoning ordeal.

Our complaints were as varied as we were. Some were upset by the process, the feeling that this had been a "done deal" from day one. Others were upset by the town leaders' general disdain for public input, by the name-calling and bullying that took place at public meetings. All of us were upset by the violations of the Open Meeting Law. We believed that if we accepted such disregard by government on a local level, we were endangering our rights as citizens to fair and open participation in our great democracy.

Regarding local zoning issues, many of us believed that the Town of Belmont was fully built-out and therefore immune to further development. But we soon learned that it was vulnerable. Besides the McLean and Alewife properties, there are older homes that can be torn down and replaced with larger ones, vacant commercial lots that are being eyed by developers, even some farmland that could be built on for the first time.

We asked ourselves, do we, as conscientious citizens, have the foresight to plan the kind of development we want and discourage the kind we don't? Are our zoning by-laws adequate with regard to height and bulk restrictions, setbacks, signage, wetland protection, and noise? How are we to control the traffic? Can our streets be made safer for children and the elderly? Do we have a plan?

In the end, we agreed that things would be different in the future. We would band together and create a citizens group, one that would serve as a forum in which all residents of the town could understand and participate in the discussions that would affect our town. We believe that all the residents of the town should have the information

they need to understand the various planning and environmental issues that lie ahead. As citizens, we must be responsible for mapping out our future as a community, and not let it be defined for us by outside pressures.

As a result, the Belmont Citizens Forum was formally established as a nonprofit corporation in September 1999. Our mission statement summarizes our goal of keeping Belmont the beautiful residential community we love, and remaining informed and active as development pressure intensifies.

*Lynne Polcari is a stockbroker and a mother of three in Belmont.*

## **Belmont Citizens Forum Statement of Purpose**

- (a) To preserve and protect buildings, objects, open space, and districts in the town of Belmont that have historical, architectural, environmental, or general cultural significance.
- (b) To disseminate information about, and promote interest in, the historical, architectural, environmental, and general cultural heritage of the Town of Belmont and its vicinity.
- (c) To create public awareness and interest in the issue of traffic and public safety as it relates to Belmont and surrounding communities.
- (d) To promote interest in the preservation and protection of environmental resources.
- (e) To educate the public and community leaders about the environmental importance of open space and the necessity of continuing community participation and oversight in proposed development projects.

### **Belmont Citizens Forum Board of Directors**

Sue Bass, President      Jim Graves, Vice President  
Lynne Polcari, Secretary      Nelson Bolen, Treasurer  
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**Newsletter Editor:** Sharon Vanderslice

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# *Is Belmont Prepared to Handle Hazardous Materials?*

*By Lynne Polcari*

The planned R&D construction on the McLean property raises serious concerns for Belmont residents. At present, there is no restriction on the type of research that can be carried out in the facility or the materials that may be used. As a result, we do not know what kind of hazardous materials and waste will be handled, disposed of, and transported through Belmont's residential neighborhoods.

Because federally defined biotechnology safety levels 3 and 4 permit research on dangerous and infectious organisms, such as the Ebola virus, and because we do not now have regulations to prohibit such research, we must act quickly. It is up to us to update our regulations and by-laws so that we can effectively define the appropriate level of risk. Our existing regulations and by-laws are outdated and offer little protection to the community.

## **Regulation or Self-Regulation?**

Does the town have sufficient trained staff to inspect the on-site handling, storage, and disposal of hazardous waste? Although federal and state laws stipulate how hazardous materials should be handled, stored, and disposed of, industry is given discretion to regulate itself. We need look no further than the nearby communities of Woburn and Natick to understand that self-regulation does not always have the best outcome.

What will it take to equip our police and fire departments to handle an emergency without danger to bystanders or to themselves? In communities across the nation, local officials have adopted evacuation plans and other emergency response plans. Do our personnel have the training and resources to ensure the safety of Belmont's citizens? What will be the effect of these extra expenditures on the final revenue realized from this development?

## **Other Towns' Experience**

We can learn from other communities. Cambridge, which is experienced in dealing with industrial hazards, has drawn up tight restrictions governing the use, storage, and disposal of chemicals.

Having learned through experience not to rely on private companies, the city conducts its own inspections on the handling of chemicals. Needham, Williamstown, and Westfield have also protected their citizens with careful restrictions. Needham's regulations require the offending industry to notify, in writing, the town's Board of Health if any untoward incident occurs at the R&D site. Without such a provision, a town would remain ignorant of most accidents and misdeeds.

And what about Belmont? According to Donna Moulthrop, director of Belmont's Board of Health, these problems will soon be examined. She feels that the town's by-laws concerning hazardous material need reviewing and updating. In the meantime, McLean intends to go ahead with the R&D facility. Sadly, the town is in no position to provide proper guidance or limits on what will become its largest user of hazardous materials.

Belmont cannot allow research to be conducted without *first* erecting proper safeguards. To do otherwise is to put at risk the peace of mind, if not the health and safety, of the people of Belmont.

*You're invited*

## **First Public Meeting The Belmont Citizens Forum**

*The Forum is dedicated to improving the level of public participation in town government. Come share your concerns about the future of our town.*

*How can we protect Belmont from over-development?*

*Can we make our streets safer for pedestrians?*

*What's happening to Belmont Center?*

*What's the status of the McLean Land Court case?*

*What should the town's priorities be?*

**All Saints' Church**

**Community Room**

**17 Clark Street (at Common St.)**

**Wednesday, February 9**

**7:30 - 9 PM**

**(Snow date: February 16)**

# Why Have Belmont Citizens Gone to Court?

By Nelson E. Bolen

The issue of the town referendum last July was not whether there should be any development of the land currently owned by the McLean Hospital. Most people would probably agree that it is not possible, or even desirable, to avoid development of that land. Instead, the basic issue was whether the citizens should be offered a less massive development, with less negative impact upon the town, than was entailed in the plan negotiated by the McLean Land Use Task Force and the Board of Selectmen.

Now a lawsuit in the Land Court seeks to overturn the rezoning of the McLean property on several grounds. The most important issue is contract zoning. If the court agrees that the whole deal is illegal contract zoning, then we will have a chance to reach a new agreement that will truly protect the town's interests. The previous zoning of the McLean Hospital land for single-family homes would be reinstated. If McLean Hospital still wants to change that zoning, it must participate in new negotiations with the town -- negotiations that will follow the spirit and the letter of the law, preclude illegal contract zoning under any guise, and involve our citizens, who now understand the issues better. There are alternatives to the single take-it-or-leave-it package that was presented by McLean.

## What Are the Issues in the Lawsuit?

The original lawsuit filed by the McLean Hospital Corporation against the Town of Belmont sought a "declaratory judgment" by the Land Court that the rezoning of the McLean land was valid. In the

*See Origins of the McLean lawsuit, Page 10*

"discovery" phase of the case, completed on December 20, key participants were questioned under oath, and relevant documents were obtained for review. With the evidence that came to light during discovery, the intervenors filed an amended "counterclaim and crossclaim" in the Land Court on December 29.

The issues raised in the intervenors' counterclaim

and crossclaim fall into two categories: *procedural* and *fundamental*.

The **procedural** issues are based on allegations that the town failed to follow the laws of the Commonwealth, as well as its own by-laws, in the activities that led to the Special Town Meeting on May 24. For example, one allegation is that the amended by-law exceeded the scope of the original zoning by-law that was presented to, and defeated by, the first Special Town Meeting on March 11. Another is that the town failed to hold public hearings on the amended zoning by-law. Yet another is that the town failed to give proper notice of the matters to be considered at the Special Town Meeting on May 24.

Other violations of law have been confirmed. On July 14, 1999, the Middlesex District Attorney, acting on a complaint originally filed by the editor of the *Belmont Citizen-Herald* early in 1998, ruled that the town's McLean Land Use Task Force had violated the Commonwealth's open meeting law by conducting improper executive session meetings on numerous occasions between January 7 and July 14, 1998. The executive session between town leaders and McLean Hospital management on the afternoon of May 14, 1999, at which the town agreed to pay McLean Hospital an additional \$2.2 million, is the subject of a separate challenge in court.

The most important issue is the **fundamental** one: illegal contract zoning. This is the matter that led McLean Hospital, hoping for a quick settlement, to file a lawsuit seeking a declaratory judgment from the Land Court -- even before the Attorney General had completed his review of the by-law.

The intervenors' amended counterclaim and crossclaim devotes twenty-nine paragraphs to specific items related to contract zoning in the McLean deal. Here are some examples:

- The zoning by-law change (Article 2), the Memorandum of Agreement (Article 3), and other actions (Articles 4 and 5) were clearly linked together as a package deal. Referring to the transcript of the first Special Town Meeting on March 9, the Town Moderator introduced them as "...a complex and integrated proposal...."

any change in the Zoning By-Law and any change in the documents will void the agreement that they represent.” The integrated proposal was a bilateral agreement -- a contract -- wherein the town agreed to perform specific actions that had value to McLean Hospital, and McLean Hospital agreed to transfer land to the town.

- Under the terms of the Memorandum of Agreement, the Belmont Planning Board is required to approve the Concept Plan for the development of the Research and Development Subdistrict before McLean would convey the conservation land and the cemetery land to the town. If the board does not approve the Concept Plan -- regardless of whether it is adequate and satisfactory -- the town will not receive what it was promised for rezoning the land. This requirement undermines the independent review authority -- the policing power -- of the Planning Board.
- The Memorandum of Agreement requires the town to pay McLean Hospital \$2.2 million in consideration for McLean’s agreement to reduce the allowed gross floor area in the Research and Development Subdistrict from 200,000 to 150,000 square feet. However, McLean never had any right to build 200,000 square feet of floor space in that subdistrict. This agreement, therefore, obligates the town to pay for something that McLean did not possess and could not convey.
- The Memorandum of Agreement also states that the town will sell 12,807 square feet (0.294 acres) of the land that it obtains from McLean Hospital to Eric and Helga Cosman for \$100,000. This extraneous transaction is wholly unrelated to any other aspect of the rezoning. Furthermore, if the town ever has surplus property or land, it is required by law to advertise it publicly and sell it to the highest bidder. Such a sale cannot simply be tucked into a rezoning agreement.

*Nelson Bolen, a retired engineer, has lived in Belmont for thirty-three years and is the treasurer of the Belmont Citizens Forum.*

## What Is “Contract Zoning”?

The *Handbook of Massachusetts Land Use and Planning Law* by Mark Bobrowski contains the following information on contract zoning:

Illegal contract zoning is said to involve the process by which a local government enters into an agreement with a developer whereby the government extracts a performance or promise from the developer in exchange for its agreement to rezone the property.

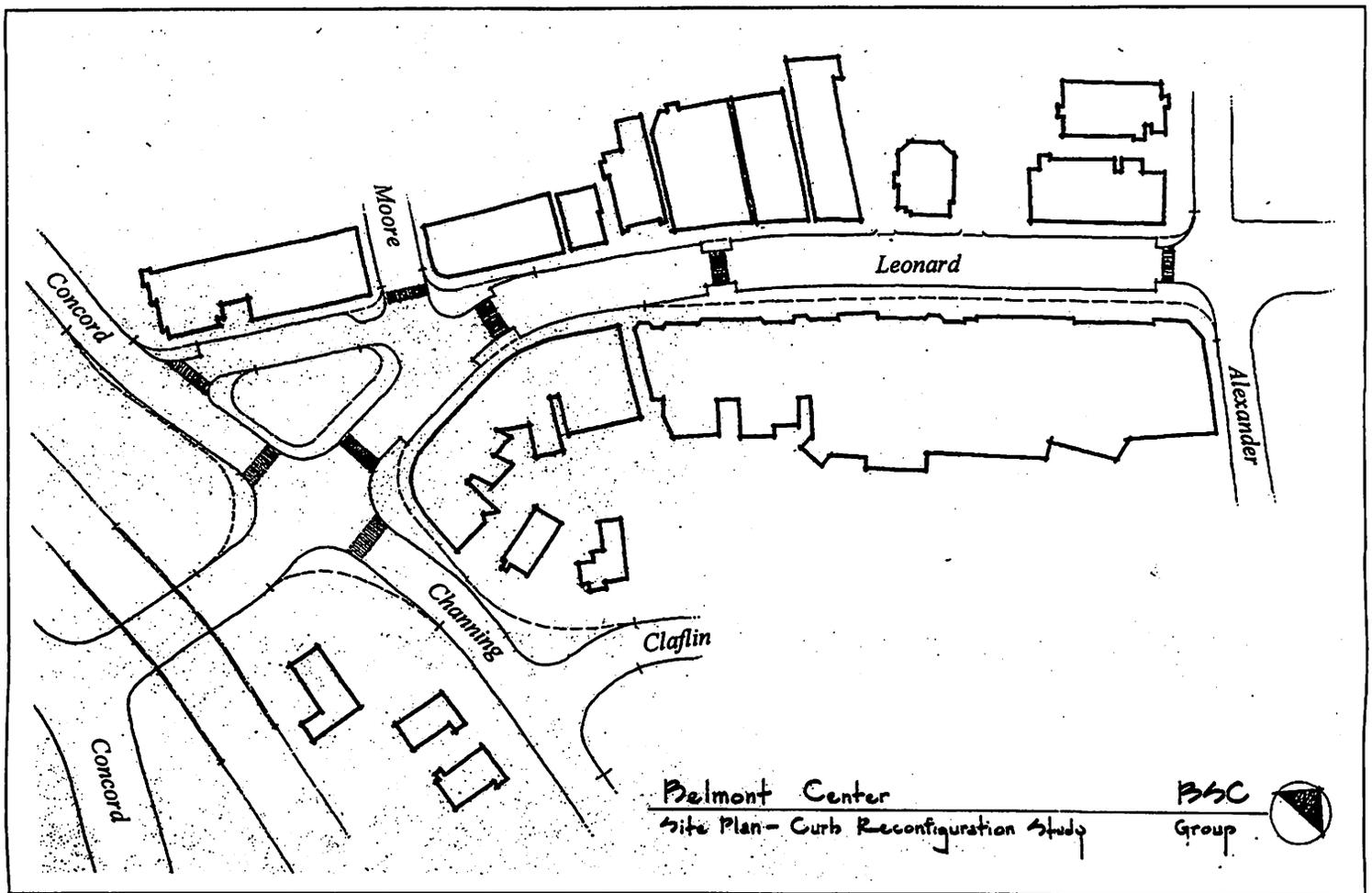
Illegal contract zoning is disfavored by courts because of the risk of fraud, corruption and undue influence but is disapproved of largely on the basis of the principle that a municipality may not contract away its police power to regulate on behalf of the general welfare.

However, current views of contract zoning would result in an invalid rezoning only where there is an express bilateral agreement that bargains away the municipality’s future use of the police power.

One document obtained in the McLean lawsuit is a November 6, 1998, report to the Belmont Selectmen from Philip B. Herr & Associates, planning consultants based in Newton. The report says:

Rezoning in exchange for money or other considerations or with attached conditions raises a red flag among planners, since the ethics and legality of such arrangements are often challenged.

The basis for the McLean rezoning has been described by a number of people as an exchange. The Hospital is proposing to give the Town land and other valuable things, in return for which it seeks permission to use its remaining land more intensively than would otherwise be possible, with fewer procedural obligations, and with greater regulatory certainty. That aptly describes contract zoning.



**Belmont Center, continued from Page 1**

and Leonard during peak times. Pleasant, Moore, Concord, and Leonard would also get additional traffic. The TAC is discussing the possibility of a three-month test of this change in traffic patterns, with police officers directing drivers at the key intersections.

Chairman Paolillo hopes to present a recommendation to the Board of Selectmen in March after discussing the plan further with abutters and business owners. If the Selectmen approve, the project would then become part of the town's annual budget process, with funds ultimately approved by Town Meeting.

*Clafin Street Parking*

Belmont Center business owners would like to have more parking available for shoppers, but adding new spaces is a challenge. It is important to keep in mind that a majority of spaces are currently occupied by cars parked for the full working day.

The cost of an underground parking garage is prohibitive. However, TAC members unanimously favor a plan that would raise the number of parking spaces in the lot behind the center from 154 to 182 by using angle parking and making a portion of Clafin Street part of the present parking lot. Additional on-street parking spaces could be gained by squaring off the intersection at Clafin and Channing and the intersection at Cross and Channing.

Other ideas include: (1) shifting some of the all-day parkers to a nearby church lot and providing shuttle service as needed, (2) redesigning the existing lot to allow "buddy parking," i.e. people who park all day are blocked in by another car parked behind them, and (3) outlining new bus routes to make it easier for shoppers to reach the center without a car.

**New Bus Routes**

More public transportation could reduce the traffic impact of any development on the McLean property. New bus routes would take at least a year

to implement, but they offer advantages to all residents.

### *New Waltham-Belmont-Alewife Bus Route*

A MBTA bus from Waltham past Bentley College through Belmont to Fresh Pond Mall and Alewife Station is under consideration. In addition to cutting down on commuter cars, this bus would give residents, particularly teenagers, easy access to the Bentley College pool and the Fresh Pond cinema. If the bus is routed past the McLean campus, McLean employees might be encouraged to use public transportation.

### *A town shuttle connecting Waverley Square, Cushing Square, and Belmont Center*

A small express bus, like that used in Lexington, could run quietly and constantly to provide about twenty passengers, on each run, with free rides. This shuttle service, if successful, might be extended to other parts of town. The Metropolitan Area Planning Council has federal grant money available to towns that wish to improve air quality by increasing the use of buses and bikes. A grant to fund a new shuttle bus could cover 80 percent of the cost, at least for the first two years. In applying for the money, the town must show a reduction in the number of car trips. The next opportunity to apply for this grant money is January 2001.

A subcommittee has been formed to discuss which routes might work best. The members are Tommasina Olson, Linda Nickens, Joel Douglas, and Sal Lentini.

### **Truck Routes**

The City of Cambridge, which enacted a citywide night truck ban this past year, has agreed to suspend the ban if the Massachusetts Area Planning Council will propose major truck routes for the general area (including Cambridge, Somerville, Watertown, Belmont, and several other surrounding towns) that will avoid residential neighborhoods. The city has said it will renew its ban on through truck traffic if no regional truck route plan is established. The Cambridge City Council has said it is willing, if necessary, to go to court to get its truck ban upheld.

A subcommittee of the MAPC is being formed with one representative from each town to pick these routes. Sgt. Ken Hamilton of the Belmont Police Department is Belmont's representative.

Something to consider: What are the odds of finding a Belmont street that is truly nonresidential?

### **Upcoming Public Meetings**

Traffic Advisory Committee Meeting Schedule:  
Belmont Library Assembly Room 7:30-9:30 p.m.,  
February 15, March 21, April 18, May 16, June 20.

Agenda for February 15:  
The Clark Street Bridge: Should it be reopened?  
The Redesign of Belmont Center

### **Whom to contact:**

Mark Paolillo, Chairman of the Traffic Advisory Committee, at 437-2729  
Tom Gatzunis, Director of Community Development, at 489-8220

## **Zoning for a Livable Future**

**A public forum**

**Tuesday, February 15  
7:30 PM**

**Winn Brook School Cafeteria  
(Snow date: February 16)**

Do you understand Belmont's zoning controls?  
What are some innovative techniques in zoning?  
Can we find a balance between private property rights and public needs?  
Can "mansionization" happen in Belmont?  
Can we zone for open space?

### **Guest speakers:**

Jeffrey Wheeler, Belmont Planning Coordinator  
Philip B. Herr, Planning Consultant  
Jerold S Kayden, Associate Professor of Urban Planning, Harvard Graduate School of Design

**Sponsored by the Board of Selectmen  
and the League of Women Voters**

# Building Moratorium Proposed for Alewife Land

By Sue Bass

A one-year moratorium on any development of the 12.2 acres of privately owned Belmont land in the Alewife area was proposed on January 19, 2000, by the chairman of the Belmont Planning Board, Joseph Newberg. Although Newberg said, at a public meeting of the Belmont Land Trust, that he had not yet discussed the proposal with other members of the Planning Board, William Monahan, chairman of the Board of Selectmen, immediately endorsed it and said he was certain the other selectmen would support it.

Alan McClennen, town planner of Arlington, told of another control on development, one that is used in his town: wetlands zones and floodplain zones are established as overlays on zoning districts townwide. He suggested that the moratorium could be used to map the zones. Lloyd Allen, chairman of the Belmont Conservation Commission, said the last mapping was done in 1994, but new ones would be required, because maps by law can be no more than three years old.

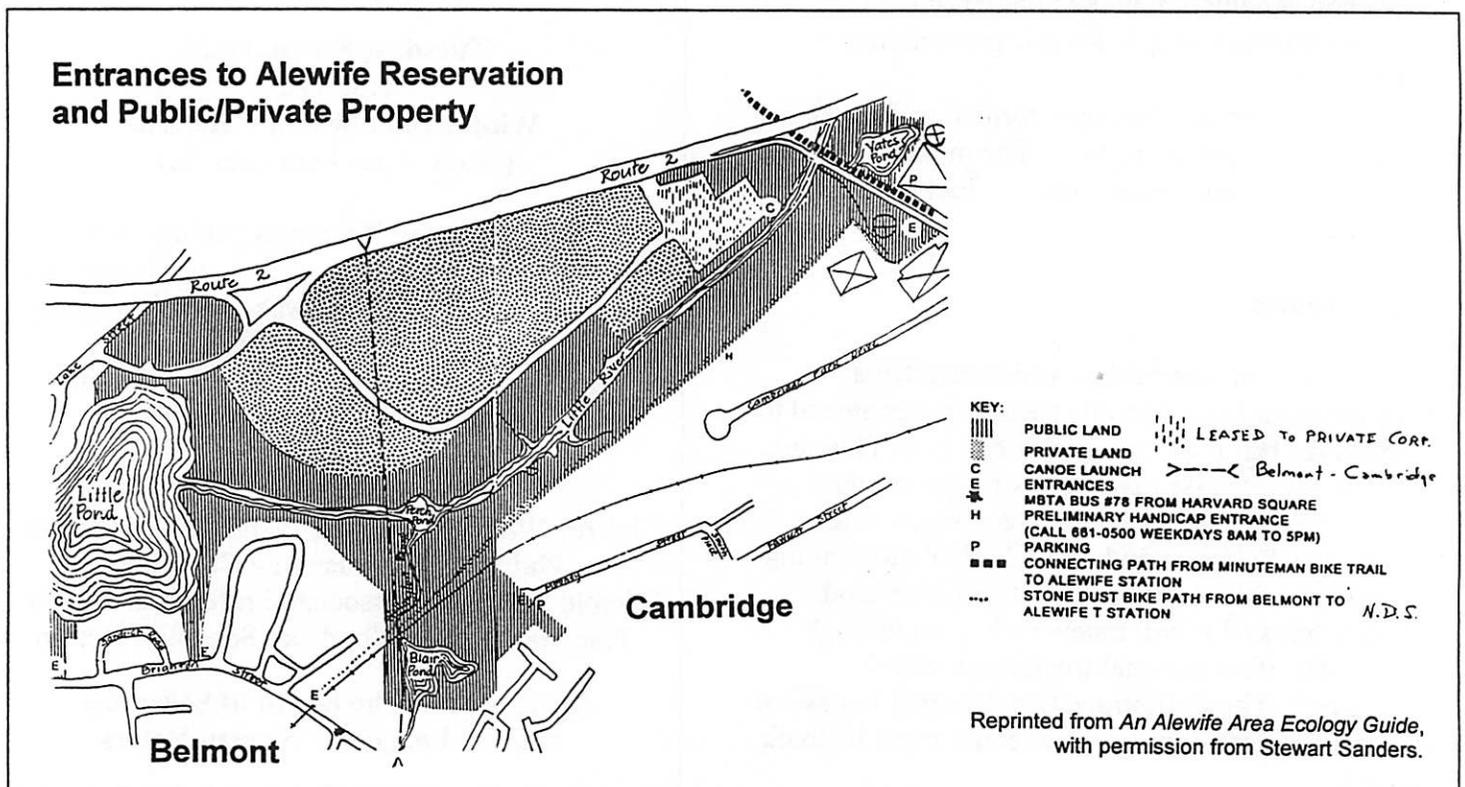
Both proposals are zoning changes that would require a two-thirds vote at town meeting.

The 12.2 acres of private land in Belmont are undeveloped, as is the 17-acre Mugar property across a curb cut to Route 2. Acquiring it for conservation land is the highest priority in Arlington's Open Space Plan.

The Belmont land, along with adjoining land in Cambridge, was bought from Arthur D. Little Real Estate Corp. last July by AP Cambridge Partners LLC, a limited partnership, of which O'Neill Properties in Watertown is the general partner. The Belmont land is now zoned for one- and two-family houses on 7,000-square-foot lots. Newberg has suggested at Planning Board meetings that it might be preferable to rezone it for more intensive development on a smaller portion of the land, like medical offices or research-and-development facilities. That would save open space without inflicting traffic on town streets, he said, because most traffic to or from such development would be on Route 2. Again, a moratorium would allow time for a study of rezoning.

The Alewife land in Belmont and Cambridge is valuable for its role in providing drainage for much

*Continued on Page 9*



*Alewife, continued from Page 8*

of Belmont, where flooded basements are common. The Little River carries 75 percent of Belmont's stormwater runoff, Monahan said. Several speakers pointed out that the whole area is already very sensitive to any blockage of water flow because it's so low. Hills Crossing, the spot where the railroad tracks cross Brighton Street, is actually four inches below sea level, Monahan said. A rise in water level at the Amelia Earhart dam in Everett can flood basements in Belmont. Any further loss of Alewife land to development might make Belmont's flooding worse.

*Townhouse Buydown, continued from Page 12*

half of the zone, approximately 4.4 acres, for the total price of \$3.2 million (at \$200,000 per lot for 16 lots). Instead, McLean offered only 1½ acres--the same 100-foot strip the Land Trust had proposed--for \$3.2 million. And the town would not even own the land, but would have only the right to place a conservation restriction on it. That may well have set a record high price: more than \$2 million an acre for a conservation restriction.

The selectmen were outraged. A memo from the town administrator to the town counsel reports, "It is Selectman Brownsberger's contention that the parties would never have reached an agreement over a purchase price. . .without a clear understanding of the dimensions of the parcel." In an interview, Will Brownsberger said that "McLean immediately backed off" from its option language when the selectmen complained, but no new option proposal was forthcoming. "The bottom line is, in all the confusion, which was caused by a number of factors, it was already dead."

There may, however, be a second chance. In an interview with the *Globe Northwest Weekly*, Frank Stewart, the president of Northland Residential Corporation, the townhouse developer, said he is willing to discuss ways to increase the buffer in return for compensation. "Now is actually a perfectly viable time to negotiate with an owner," Brownsberger said. "We're much more likely to reach some sort of reasonable accommodation.

-- Sue Bass

## **Book Review**

### ***Trespassing***

*An Inquiry into the Private Ownership of Land*

By John Hanson Mitchell

Reading, Massachusetts: Perseus Books, 1998.

By Weld Carter, Jr.

*Trespassing* has as its major focus the history of several tracts of land in the Acton/Littleton area, from the time of its Native American occupants in the 1640s to the protective actions of conservationists during the last decade.

The author describes strategies for land conservation and their success, even after town authorities and more than one town meeting (in which all residents took part) had voted against those seeking to protect the lands. Mitchell, the editor of the Massachusetts Audubon Society magazine *Sanctuary*, mentions the legal basis for the measures that delayed, and ultimately prevented, the developments that might have caused severe damage to wildlife and to the quality of life of local residents.

He introduces us to Linda Cantillon, a woman employed by the high school cafeteria, who had a profound interest in preserving the natural habitats she had enjoyed since her childhood. Mitchell tells of the work Cantillon undertook, on her own initiative, to learn how to save the land. The reader meets a colorful cast of characters including the Solicitor and various landowners, farmers, migrant workers, and "women in tennis shoes" who are involved in the struggle.

Mitchell also takes us on a historic inquiry into the treatment of Native Americans on these sites and the effects of European-style agriculture on the land and wildlife. With his appreciation of diversity in the use of land, Mitchell supports the old practice of community-owned housing surrounding a common. He raises questions concerning the legality of individuals holding title to land, including a discussion of English law of the seventeenth and eighteenth centuries and its roots before 1066, a topic I particularly enjoyed.

Unfortunately for the local residents, the best intentions did not produce all the desired results. Even though the defenders of an environmentally friendly and moderate development scheme finally won the legal struggle, economic realities resulted in some damage to the land. Nevertheless, the delay allowed a new local land trust to purchase several substantial parcels, which remain protected and serene.

I consider the book a fascinating story, one especially relevant to the current issues in Belmont.

## Origins of the McLean Lawsuit

Massachusetts law requires that all town zoning by-laws be reviewed by the Attorney General before they can take effect. This requirement applies regardless of any controversy surrounding the by-laws. The Attorney General has ninety days to conduct the review, and the clock does not start until the town submits the new by-law to the Attorney General's Office.

On July 21, 1999, the day after the townwide referendum, the McLean Hospital Corporation filed a lawsuit against the Town of Belmont in the Massachusetts Land Court. McLean sought a "declaratory judgment" that the rezoning of the McLean Hospital land was valid. At that time, the Town of Belmont had not even submitted the new zoning by-law to the Attorney General for the mandatory review. The first public notice of McLean's lawsuit appeared in the small print of the "Legal Notices" section, on page 15, of the August 19 issue of the *Belmont Citizen-Herald*. A front-page article in the August 26 issue of the *Citizen-Herald* contained the following explanation:

In papers filed with the court, Stephen Kidder, an attorney for McLean, wrote: "Certain issues have been raised concerning whether the zoning amendment is invalid on the basis that [it] represents impermissible 'contract' zoning."

Eleven Belmont citizens, concerned about this preemptive strike by McLean Hospital, filed a motion

in the Land Court on September 16 to intervene in the case. The eleven citizens also sent a letter to the Attorney General, raising various issues with the rezoning of the McLean land.

The purpose of the newly formed Belmont Citizens Forum is to protect and preserve the environment of the town. Consequently, it quickly became an active supporter of the intervenors' efforts to ensure that the laws of the Commonwealth are followed in the development of the McLean land.

The report of the Attorney General's review of the McLean rezoning was released on November 8, the end of the ninety-day review period. The Attorney General's letter clearly states that his review was limited to Article 2; that is, to only one of the four articles that had been adopted by the Special Town Meeting on May 24. His letter also states that, although he has limited power to disapprove local legislation, he disapproved several parts of the zoning by-law that dealt with the Cemetery Subdistrict. The Attorney General ruled that they had been added as improper amendments.

The Attorney General's report, acknowledging that the McLean rezoning raised a variety of issues and that his office is not a court of law, goes on to state: "We leave many of the points raised in these letters for further consideration by a court [of] competent jurisdiction." Thus, the Attorney General's review did not settle many of the significant issues, and that is the reason that the case in the Land Court is relevant and important to the future of the town.

-- Nelson Bolen

## *Times Are Tough for Continuing Care Communities*

By Henry Bass

McLean Hospital recently announced a preliminary agreement with a developer to build a 486-unit residential facility for senior citizens on its property in Belmont. The developer it named was American Retirement Corp. of Brentwood, Tennessee. American Retirement Corp. was founded in February 1978 by Jack C. Massey and Dr. Thomas F. Frist, Sr., who also founded Nashville, Tennessee-

based Hospital Corp. of America (HCA), which later, through a merger, became Columbia/HCA. It was to HCA that the management of Massachusetts General Hospital tried to sell both McLean and Mass. General in 1984, only to be stopped by the Harvard Medical School faculty. Frist's son, Bill Frist, is a U.S. Senator from Tennessee.

Columbia/HCA, the largest health-care chain in the United States, has had problems recently. After a

federal grand jury investigated its Medicare and patient-referral procedures, several top executives left the company. The company ceased offering partnership interests to its physicians and said it would disclose more financial information than is required by Medicare in the future. In July 1999, two Columbia/HCA employees were found guilty in federal court in Tampa, Florida, of conspiracy and making false Medicare statements. A third employee was acquitted, and the jury deadlocked on a fourth. Columbia/HCA cooperated with the government investigation of the company.

American Retirement Corp., HCA/Columbia's sister firm, is in the long-term-care industry. This industry had a dismal financial performance in 1999. During the year, the stock of American Retirement (ticker symbol ACR) declined from 18 1/2 to 4, although it had recovered somewhat, to 7 3/4 as of January 21. Most of American Retirement's competitors have suffered even more. American

Retirement's financial situation is less grim partly because the vast majority of its customers are funded privately rather than by Medicare.

Nevertheless, American Retirement's problems were serious enough that, at the end of the third quarter of 1999, it decided to suspend construction on most new facilities and concentrate on acquisitions of attractively priced existing long-term-care complexes. Several planned construction projects were put on hold.

Todd Kaestner, Executive Vice President of American Retirement, said the McLean development was entirely different from the canceled projects. He said his company intended to go ahead with the McLean complex, though plans are still in the preliminary stages. The company is interviewing architects, he said.

*Henry Bass is an economist.*

**Check web sites: American Retirement ([www.arclp.com](http://www.arclp.com)) Columbia/HCA ([www.columbia-hca.com](http://www.columbia-hca.com))**

# We need you.

*Preserving and protecting what we all love about Belmont requires citizen action. If you can volunteer even a few hours a month, you can make a difference. You do not need to be an expert—just a person who cares about our town. Please tell us how you can help.*

## I can devote time to:

- Environmental Research
- Planning and Zoning Issues
- Traffic and Transportation Issues
- Hazardous Materials/R&D
- Historic Preservation and Archaeology
- Legal Issues
- Newsletter: Writing, Reporting, Graphics
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*We are working with the best legal counsel available (Gregor McGregor chairman of the Massachusetts Association of Conservation Commissions, and his associates). This is not cheap. Please give what you can. Note that the Belmont Citizens Forum is a nonprofit organization. We expect that your donation will be tax deductible. If you have questions, please call 484-0809.*

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**Address Correction Requested**

**People Are Asking**

**Whatever happened to the  
McLean townhouse buydown?**

Zone 1A on the McLean property is the clump of townhouses that juts out into the open space, coming within 200 feet of One Tree Hill. These 8.81 acres presented a problem for those trying to convince open-spacers to approve the rezoning, so a compromise was offered. If people donated enough money, they could buy out half the zone, the half that impinged most egregiously on the open space. Or that's what people *thought* the compromise meant.

The actual language was: "McLean agrees to grant to the Town an option, in a form satisfactory to the Town, to purchase up to sixteen lots contiguous to the high quality open space in Zone 1A at a price of \$200,000 per lot, provided, however, that if at least six lots are not so purchased by September 30, 1999, the option will terminate."

At the May 24 Town Meeting, knowledgeable people raised doubts about this language. What was

the legal definition of "lot"? This turned out to be a prescient question.

Through June, July, and August, McLean failed to come up with the legal language for the option. People who wanted to give money didn't know what they could buy. The Selectmen discussed the issue in executive session. Time was *running out*.

Documents made public as a result of litigation in Land Court show that the Belmont Land Trust suggested a plan to McLean: buying a 100-foot strip along the northern boundary of the zone, the One Tree Hill side--about 1½ acres--to widen the buffer between the houses and the open space. The Land Trust would compensate McLean for loss of revenue.

That offer was immediately rejected, but the legal language for the original option was not forthcoming. Not until September 10--twenty days before the option was to expire--did McLean President Bruce Cohen spell out the offer. It was not at all what people had expected--that they could buy the northern

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