

# **Bond Case Briefs**

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## **PUBLIC LANDS - MASSACHUSETTS**

### **Smith v. City of Westfield**

**Appeals Court of Massachusetts - August 25, 2016 - N.E.3d - 2016 WL 4467901**

After a preliminary injunction had been granted that prevented school construction project at city playground, the Superior Court vacated injunction. Residents appealed.

The Appeals Court held that:

- City did not specifically designate playground for public use, and thus constitutional protections were not triggered;
- Statewide comprehensive outdoor recreation plan (SCORP) was inconsistent with statutory and judicial interpretation of applicable constitutional provision; and
- Prior public use doctrine did not apply to preclude city from permitting construction of school building on property.

City did not specifically designate, in a manner sufficient to invoke constitutional protections, by deed or other recorded restriction on the land, a playground for public purposes and land was not taken for those purposes, and therefore city was not required to obtain two-thirds vote of the General Court before permitting construction of school building on land. art. 97 of the Amendments to the Massachusetts Constitution.

Statewide comprehensive outdoor recreation plan (SCORP) that considered land rehabilitated with Federal Land and Water Conservation Fund (LWCF) as being public lands protected under state constitution did not render playground rehabilitated with LWCF grant public lands subject to constitutional protections. SCORP contradicted statutory and judicial interpretation of applicable constitutional provision. art. 97 of the Amendments to the Massachusetts Constitution.

Prior public use doctrine did not preclude city from permitting construction of school building on land that had previously been used as playground, where land had been conveyed to city with no limitation on its use, and there was neither a taking nor a prior public or private grant restricting the use of the land.