

Legal Framework for Prescott Park

Mayor's Blue Ribbon Committee on the Prescott Park Master Plan

May 4, 2016

Who owns Prescott Park?

The City of Portsmouth owns the parcels that make up Prescott Park.

How did the City come to own the parcels, which make-up Prescott Park?

The Prescott sisters, Josie and Mary, are directly responsible for the creation of what is now known as Prescott Park. After their older brother Charles died, his sizable inheritance eventually came under their control. Beginning during their lifetimes, the sisters and their agents utilized their funds to acquire land along the Marcy Street waterfront for the purpose of transforming the area.

Beginning in the late 1930s and over the next forty years, through a number of land transactions and construction projects, parcels were acquired, buildings were cleared, and improvements made which resulted in today's Prescott Park. Mary Prescott died in 1939 and Josie F. Prescott died in 1949. Agents of Josie F. Prescott, under the terms of Josie F. Prescott's Will and Testament from 1938, continued the work of assembling and improving parcels as directed. Specifically, the Trust directed her agents to continue to acquire and improve property along the Marcy Street waterfront after her death and, within five years, convey those properties to the City to be "used for parks and recreational purposes". The same document directed funds to be set aside in a Trust for the maintenance and care of the acquired parcels. In 1954, the land acquired and the funds were conveyed to the City of Portsmouth after which time additional properties were acquired and improved resulting in today's Prescott Park. The Josie F. Prescott Trust remains today a City's trust fund, proceeds from which are used to fund the maintenance of the buildings and grounds of Prescott Park, which includes Four Tree Island.

What are the restrictions on the parcels collectively known as Prescott Park?

A discussion of the "restrictions" of the use of the City's Prescott Park has many components. In general, the following statements will help answer the question.

- a. As a City Park, the Portsmouth City Council has wide latitude in determining how the Park property is used through City ordinances or other authority it chooses to exercise as the owner of City property. As examples, City ordinances exclude skateboarding in Prescott Park; no person may bring alcoholic beverages or drink alcoholic beverages at any time in any City park.
- b. The 1954 deed for the majority of the parcels transferred to the City of Portsmouth, expressly states the "conveyance is upon the express condition and essential part

consideration that the premises shall be used only for park and public recreational purposes and that no intoxicating liquors shall ever be sold thereon”.

- c. In addition, and most importantly, the City holds the ownership of the parcels which make up the Park in trust due to the manner in which the property was acquired - through the Will and Trust of Josie F. Prescott. As a result, the intent for which the parcels were conveyed to the City is paramount. In New Hampshire, the Charitable Trust Unit of the Attorney General's Office oversees that trusts and trust property are used in a manner consistent with the maker of the trust.

What is the legal role of the Trustees of Trust Funds?

The Trustees' role is to administer the City's Trusts in accordance with their terms. There are over 90 Trusts held by the City of Portsmouth.

What is the role of the Trustees of Trust Funds in Prescott Park?

Because the Trustees of Trust Funds hold the Josie F. Prescott Trust, a Trust established for the purpose of maintaining the Park, all City Councils in recent memory have deferred management and operation of the Park in almost all matters to the Trustees of Trust Funds. This is a result of informal policy, not of law.

Did the Prescott Trust name the Trustees of Trust Funds as administrators of the Prescott Trust?

No. However, in addition to purchasing land and conveying it to the City for use as a public park, Josie F. Prescott (the survivor of her sister) also instructed her Trustees (through her Will) to gift funds to the City for the purchase of other parcels in the area and the maintenance of the Park. These funds were left in "trust". Under the Portsmouth City Charter all Trusts are to be administered by the City's Trustees of Trust Funds. The Josie F. Prescott Trust as well as ~90 other Trusts held by the City of Portsmouth are administered by the Trustees of Trust Funds. The Josie F. Prescott Trust is the largest single Trust Fund of the City of Portsmouth. As of June 2015, the book value of the Trust was \$3.9 million.

What is the role of the New Hampshire Attorney General's Office Division of Charitable Trusts?

The City of Portsmouth holds the ownership of Prescott Park in trust due to the manner in which the property was acquired through the Will and Trust of Josie F. Prescott. The Park is held in charitable trust and all charitable trusts in the state are overseen by the Charitable Trusts Unit of the Attorney General's Office. In general, the Charitable Trusts Unit oversees such trusts and trust property to assure that trust property is being used in a manner consistent with the intent of the maker of the trust.

Who owns the structures in Prescott Park?

The City of Portsmouth owns all of the structures in Prescott Park.

What is the Public Forum Area?

The Trustees of Trust Funds have adopted a Public Forum policy out of a desire to accommodate the public policy and constitutional considerations for permitting protected expressive activity while at the same time maintaining the Park as a place for the public to quietly enjoy its lawns, garden and scenic attractions. The general area of the public forum area is the pier and parking areas closest to the Park entrance at State Street.

What agreements are in place for the use of portions of the park by other entities?

The City of Portsmouth has formal agreements in place with three organizations for the usage of specific spaces in the Park. These include the Players' Ring Theatre (Marine Railway Building fronting Marcy Street); the Prescott Park Arts Festival (various sites within the park), and the Gundalow (docking structure near the Sheafe Warehouse).

What is the status of the proposed "new stage" by the Prescott Park Arts Festival?

On September 8, 2015, the Portsmouth City Council voted to authorize the City Manager to "proceed with land use reviews regarding the Prescott Park Arts Festival's proposed stage relocation with final approval by City Council before stage is built". As a result, the PPAF began the process of seeking land use and other approvals (e.g. wetland permit applications) for the creation of a new stage and related facilities in the park. As the owner of the park and owner of structures within the Park, the City of Portsmouth is the applicant for the permit application. Per City Council vote from September 2015, no new facility will move forward without a vote of the City Council.