

CITY OF NEWTON

IN BOARD OF ALDERMEN

COMMITTEE ON COMMUNITY PRESERVATION REPORT

TUESDAY, MARCH 27, 2007

Present: Ald. Linsky (Chairman), Parker (Vice Chairman), Lennon, Hess-Mahan, Sangiolo, Yates, Lappin.

Also Present: President Baker, Ald. Johnson, Mansfield

Others Present: Mayor David Cohen, Dan Funk (City Solicitor), CPC Members Charlie McMillan (Chair), Doug Dickson, Ken Kimmell

**REFERRED TO COMMITTEE ON COMMUNITY PRESERVATION AND
FINANCE COMMITTEES**

#34-07 COMMUNITY PRESERVATION COMMITTEE recommending that the sum of \$74,770 be appropriated from the Community Preservation Fund for purposes of funding the *City Archive Preservation* project. [01-25-07 @4:06PM]

ACTION: **APPROVED 7-0-0**

NOTE: Ken Kimmell presented on behalf of the Community Preservation Committee. He was joined by David Olson, Clerk of the Board.

Mr. Olson said that the proposal that he placed before the Community Preservation Committee was for a total of \$150,000 to work on the City Clerk archives that are housed in City Hall. The archives are spread out over three vaults in the City. The main vault is in the library and that houses the oldest records in the City dating back to the 17th century. In the City Clerk's vault, we house most of the vital records; these are the birth, death, and marriage records for the City and current Aldermanic documents. The money would be spent in this project to provide new shelving for the City Clerk's vault to allow more storage within that space. By putting compact shelving within that space, the space would be doubled and some of the most important documents, which are stored in the basement of City Hall, could be moved up out of that damp, dark space and into appropriate and proper storage.

The bulk of the money would be used to repair volumes. Two volumes were brought for the Committee to take a look at. A book of birth records for 1943-1945 was displayed and it was plain to see that it was very well used, especially now that people are coming in to find their birth records to get their passport. The paper that they were originally created on was a woodpulp paper, and the acids in the paper itself are starting to destroy it. The conversation work that would be done would be by a professional conservator to de-acidify the paper, repair and mend any pages that have become brittle and broken, and then, for this particular volume, to encapsulate each page in a Mylar sleeve for protection. These books

and documents can then continue to be used without damaging the paper or the information contained on that paper.

The other volume – a 1902 death records – is actually not in too bad condition in terms of the information inside. The binding, at over 100 years, old is starting to deteriorate, but the quality of the paper that was used when this was created was much better. One could see that the pages are in very good shape; they are all bound in well. Some of the stitching is starting to come apart and they do need to be rebound. When these books are sent out to be preserved and conserved, the pages will be scanned and photographed so we can then limit the use of these books in the future. By scanning the images and having them online, people can look up information for themselves. Many of the older records are used by citizens for genealogy. They are constantly being taken out of the vault and people are looking through them. By putting some of this information online, we will be able to help preserve these even longer by having the digital images.

Mr. Olson went on to say that The Community Preservation Committee asked him to expand this project over two years as opposed to one year. He said that, therefore, request that you have in front of you right now for \$74,770 – is for half of the project. He said that he'll be spreading this out over the two years instead of trying to get it done in the one year, so he'll be back again in a year to ask for the balance of the money to complete the project.

Ald. Hess-Mahan asked why the CPC asked to split the project. Ken Kimmell answered that at the time, this was one of the first projects that went through the process and we anticipated quite a number of expensive projects coming up, and we were looking for a way to spread the dollars out. There were some immediate things that really had to be done right away but the whole project didn't have to be done right away. He said it seemed we could afford to spread it out over two years without undermining what had to be done.

David Olson reiterated that there was no problem in spreading this out over two years. There will be two phases: The first phase is to do conservation and preservation work on books like this - actually the newer books but the paper is much more deteriorated. In the list that is with the application, any of the books that say "Mylar encapsulation" next to them are in the first phase.

The second phase would include books like this one where the paper is in great condition and we're not in danger of losing pages or information. This will be just a rebinding. The compact shelving for the vault will be in the first phase. We don't want to do all this work on these wonderful books and then not have a place to put them. In the second phase I have requested some fireproof cabinetry for things that we can't fit in the vault. Many of the Aldermanic Committee records are sitting in open shelving in the office right now and putting them in fireproof cabinetry will protect them. Should City Hall catch on fire they'll be protected, but also if City Hall should catch on fire and fireman are able to put the fire out, we'll be able to avoid water damage.

Ald. Hess-Mahan asked in what format they would be scanned. Mr. Olson answered that he's working with a company to determine that. It will either be a .tif image or a .pdf file. The archival standard at this point is a .tif image but I think .pdf files would be more useful. Ald. Hess-Mahan noted that certainly online, people don't want to download .tifs.

Chair Linsky asked if there are any back-ups right now for any of these documents. Mr. Olson said that for the other records, there are not. For the 1943-1945 record, the actual birth certificate is in the vault. We try to avoid thumbing through those for the same reason that you see the index to all of those. In terms of what is most precious to preserve, it's the actual signed birth certificate. This is the way that we find birth certificates and if it goes, we still have the document but we have lost the index, so it's sort of a back-up but not a real back-up.

Ald. Hess-Mahan asked in terms of security purposes and identify theft, how will the birth certificates be secured. Mr. Olson said that Massachusetts public record law allows anyone who would like to come in to look at a birth certificate to do so. The only records that have any restrictions on them are birth records where the birth parents were not married at the time of the birth. It's called an impound record. In that case the biological mother, the biological father, or the child can request that record but they are the only ones who can get a copy of that certificate. Ald. Hess-Mahan said that the reason he asked is that he saw in the newspaper that the Secretary of State is going after the Governor's website because it had publicly available information online about voter's addresses which actually is a public record. Because it was so highly visible and the Secretary of State is the one who administers the public records laws, he doesn't want to tick him off.

President Baker stated that the problem of backing up this information is if it's converted into a computer readable file, the file would be stored online somewhere. Is there any backup for the online storage? Mr. Olson said that what we're actually doing is creating 3 versions of these documents. There will be the original that will be conserved and preserved; there'll be the digital scan which will be on the city servers which are backed up on a nightly basis, and the backups are rotated every three days, so the digital copy will be backed up; and then there'll be the photograph or the microfilm and that will be kept across the street in the library vault, so that if something should happen to this building, the microfilm is still there. The digital backup are stored off-site and rotated every 3 days. So hopefully the IT department has put it into its off-site storage so we can re-create that. President Baker asked if there was a retrieval situation so that the information will be indexed on what you have, or is it just going to reproduce the index as well. Mr. Olson replied that it's going to reproduce the index as well. President Baker asked if there was any way to amplify that, or if it was worth doing. Mr. Olson said that considering the time and expense that would be needed to do that, he didn't see that as being necessary. Mr. Olson said that if you have an idea of when the birth was or the date, you can find it very easily by date. If you have no clue as to when someone was born it would be difficult, but it would be difficult either way you look.

Ald. Lennon asked Mr. Olson to talk about the contingencies of 10% on the recommended budget and although he could see there would probably be contingencies, this is almost \$7000. Mr. Olson said that a 10% contingency is a standard that has been put in most CPA applications and that is just if the estimates that we've gotten are undervalued, we'll be able to still get the project done. Ald. Lennon said that he only asked because he thought it was only 5%, but was satisfied with that answer.

Mr. Kimmell was asked to comment on how the Committee saw the project. He said the CPC enthusiastically supported the project. The CPA statute was recently amended to include documents as among the other things that you can preserve. That became sort of a guidepost to tell the CPC that this is a proper use of the Community Preservation Act funds. The records are in a shape where if action were not taken, they could be damaged or lost. It seems like a compelling public purpose to preserve

them. The CPC was excited about the concept of scanning them and giving the people access to these records via the modern way and based on the types of things we saw, the evidence of the deterioration and the compelling need to preserve them and make them publicly acceptable, we decided to support the project. Doing it in two phases does stretch the dollars out a bit making it affordable. Mr. Kimmell's recollection was that the vote was unanimous.

Ald. Parker asked Mr. Olson how many of these books will be dealt with in the first phase. Mr. Olson said that there are 55 in the project and the list is in the materials with the agenda. Any one that has the "Mylar" designation next to it would be in the first phase – 23 in all. Ald. Parker said his only comment was that it seems like its something that needs to be done for the functionality of the department if people have a right to go back and review these records and right now they're in this kind of condition. Although of course it's a legal use of CPA funds, it's a real shame that this kind of thing that deals with the functionality of a city department can't be dealt with out of the operating budget. I'd like to think that we could preserve Community Preservation funds for extraordinary things like opportunities to acquire land and historic properties. He said that for them to be used for essentially supporting the functionality of a city department is disappointing but it's a small enough amount of money and given there doesn't seem to be a better option available, I'm going to support it and I'm happy to move approval.

Chair Linsky asked for clarification on the areas of storage. Mr. Olson reiterated that they were the library, the Clerk's vault in his office, and the basement. Ald. Linsky said that Mr. Olson described the materials in the library having the oldest births and deaths. Mr. Olson said that the 1943-1945 actual birth records are in the basement at the moment and with the new shelving we're hoping to get those moved up and into the vault and out of the basement. Ald. Linsky also wanted to mention for the record that we have the opportunity to have a report that was done in preparation for this request. I think the student that did this provided a great service to the City and I hope she received some kind of commendation for that.

Chair Linsky wondered what the city is mandated to do by law, or otherwise, and whether, by virtue of this particular project, we were doing anything above what we would otherwise be mandated to do. Mr. Olson replied that the city is mandated to maintain these records in perpetuity and to provide access to those records. To be able to do that effectively, the city needs to be able to undertake this project. The city wasn't required to preserve original documents through the use of Mylar but this was the right thing to do. Ald. Linsky concurred. As to his budget for this, there is no line item. For instance, although Mr. Olson answered that it was still the right thing to do. Mr. Kimmel said that he didn't know that necessarily has to be done to comply with the public records law. However, he thought the project enhanced the public's ability to access the records that wouldn't necessarily be addressed within a budget line item to maintain the records. Mr. Olson agreed with that.

Ald. Hess-Mahan stated that this was not a situation where it's been lost to neglect or lack of maintenance. The paper itself, because of the way it was made, dissolves. The acid that was in it when it was created unfortunately causes this to happen. Libraries and post offices across the country face the same problem. Some of it is ordinary wear and tear but when you have something historic like this, and that is what the CPA is supposed to be used for, historic preservation, this comes closest to a pure historic preservation project you can possibly imagine.

Ald. Sangiolo said that she thinks it's a perfectly good use of CPA funds. These records go up to 1971 and there are obviously several more. She asked if Mr. Olson could foresee this as another project down the road. Mr. Olson answered that since the early 80s, we have begun to input the index information into a computer database. The creation of these books is not needed for the most recent information. The books between the end of that list and the 80s are in good condition right now, and we don't need to do any work on those particular volumes. The cost of conserving and preserving this volume is much less than inputting all this information into a computer database individually. The scans been done - the scans as pictures of each page. It's not an optical character recognition or anything like that, but to re-create these books by trying to create a searchable database with all this information is going to cost much more than conserving the actual historic index. Ald. Sangiolo asked if there wouldn't be a need for that because the birth certificates are being scanned currently? Mr. Olson answered that no, the birth certificates are still being kept and those original documents have to be kept and the index updated.

Mr. Olson added the State of Massachusetts is working right now on creating a scanned database for all cities and towns for every person born in Massachusetts. The state has been talking about it for 5 years at this point but there's no prototype of it yet. That's something they're working on. I don't have a timeframe as to when that might be in place. Once it does get in place, the goal at the state level, the State Registry of Vital Statistics, is that a person can go into any Clerk's office in any city and town and get their birth certificate. Right now, they're only on file at the state or city or town in which you were actually born or the city or town that your parents lived in at the time of your birth. Here in Newton, since we have Newton-Wellesley Hospital, we have a huge number of birth certificates because of the hospital being in the community. At the State level, they will take their records and scan them and when this gets in place, someone from Greenfield can come here to the Newton City Clerk's office and have access to the State's database to actually print off a scanned copy of their birth record. He didn't think we need to go there, but had no real timeframe from the State when it will be implemented and in place.

Ald. Sangiolo asked if current birth certificates are just the certificates. Mr. Olson said with current birth certificates, the basic information is put into a database and then the certificate itself is kept with us. Copies are at the State and if someone from Wellesley came, the copies would be at Wellesley town hall.

Vice-Chair Parker moved for approval. The Committee voted and approved this item by a vote of 7-0 (Ald. Vance not present and voting).

**REFERRED TO COMMITTEE ON COMMUNITY PRESERVATION AND FINANCE
COMMITTEES**

#88-07 COMMUNITY PRESERVATION COMMITTEE recommending that the sum of \$2,300,000 be appropriated, by issuance of ten-year-bonds, from the Community Preservation Fund for purposes of acquiring title to 20 Rogers Street, whether by purchase or eminent domain, for recreational use. [03-13-07 @ 10:20AM]

ACTION: **APPROVED 6-0-1 (Lennon abstaining)**

NOTE: Ken Kimmell once again presented on behalf of the CPC. He noted that the CPC was very enthusiastic to present this recommendation to the Committee on Community Preservation. He asked that with the Committee's permission, that the Mayor lead off with his presentation and then Mr.

Kimmell would talk about what the CPC considered and didn't consider and why they came to their conclusion.

Mayor Cohen said that he wanted to make a number of opening remarks about this docket item. The opportunity to acquire the property at 20 Rogers Street is really in many ways a once in a lifetime opportunity. The property is for sale, there is no one living in it. Its acquisition will have a tremendous, positive impact upon the quality of the experience at Crystal Lake, and it will immeasurably simplify the task before us in repairing the wall that currently serves as the boundary between the City's property and the currently privately owned property at 20 Rogers St.

The Mayor went on to say that he has taken the unusual step of seeking acquisition by eminent domain because he believes it is the most direct and straightforward way of acquiring the property for fair market value. One thing he wanted to stress was that the City and the Community Preservation Committee are absolutely willing to pay what this property is worth. One of the difficulties has been that while the City has had an appraisal done, the owner of the property has not. And coming to a meeting of the minds on price has been very difficult, if not impossible. Going the way of eminent domain will enable the City to acquire title to the property right away. It will allow us to offer the appraised amount, which is \$2.3 million, to the landowner. If the landowner feels that amount of money is inadequate, he can basically go into court and have a hearing, and have a jury determine what the fair market value of the property is. The City would look forward to, and actively participate in such a proceeding. We would also, to expedite things, use some alternative forms of resolution such as arbitration or the City and the landowner agreeing on a neutral third party to serve as the appraiser and come up with a figure. Whatever way that is fair and will come up with a valid fair market value, we will go along with.

The Mayor went on to say that he knows that one of the questions that could be asked is whether we could be tied up in court for years by someone who is prone to litigation. He said that the answer for the most part is no. There are two ways you can challenge this acquisition through eminent domain. The first is you can challenge the validity of it and for that the owner would have to show that we were not using the property for a public purpose. The Mayor said that it is absolutely beyond question that using property for public passive and active recreation purposes is absolutely and indisputably a public purpose. Therefore, there is no question that the landowner could not challenge us and tie is up on that issue.

The second thing that the owner could do would be to disagree with the price offered. The good thing about the disagreement about the price is it does not stop the taking and the change of ownership from taking place. Once the Board of Aldermen votes the taking and it is recorded in the Middlesex Registry of Deeds, title to the property will pass by operation of law to the City of Newton. Even if it takes ten years to determine what the fair market value of the property is and what we may ultimately have to pay the owner, the fact of the matter is that once the vote is done, and once the taking is recorded, the City owns the property and can use it and has full rights as the owner.

The other reason why acquiring the property by eminent domain for fair market value is so critically important is because there are so many liens on the property. Right now for a property worth \$2.3 million, there are approximately \$12 million in liens on the property. About half of them are government liens, tax liens by the IRS and the State Department of Revenue, and the other half are

private liens, one by the first mortgagee of the property, several others by individuals who have obtained judgments against Mr. Hannon and are trying to collect using this property. Once the taking takes place, the private liens are cut off.

With respect to the government liens with the IRS and the State, the city is already in contact with them. They have procedures for dealing with these issues and we will be able by the time that we are ready to take possession, we'll have agreements worked out with the two governmental lien holders on how to distribute the money that we are awarding for this property. If the city was to do a negotiated purchase and sale, we would have to go around to each of the private lien holders and negotiate an individual settlement with them and they would be under no real obligation to settle. The process could take years. So, as a practical matter, a voluntary purchase and sale under these circumstances simply is not a practical alternative and it is something that we fortunately in a position to avoid. The Mayor wanted to make it clear that for the people who own judgments against Hannon, the City's taking of the property would not be extinguish their right to a judgment. If a person had a judgment against the landowner, that person could not collect that debt using this property. However, Hannon will still owe them the money and they are free to find other assets that he may have, wherever he may have them, and attempt to get satisfaction from that. Their ultimate recourse is, under federal bankruptcy law, to the put Mr. Hannon into bankruptcy. The City is not allowing him to escape any judgments that he may owe.

The Mayor cited a Connecticut case that went all the way to the Supreme Court which took years and years to resolve. He stated that the City is not putting itself in that sort of situation. The issue in that case revolved around the issue of whether or not the taking was really for a public use. What they did in that case (Kilo vs. New London) was they took land that was not in a blighted condition and then they sold it to another private developer to develop it into what they felt was going to be a more beneficial use. The Supreme Court ruled narrowly that that was in fact a public purpose. But the reason it took so many years is because it was so questionable. In this case, there is no question that what we are doing is a public purpose. We are retaining control of the land and we're using it to enhance a park that has been in use almost 90 years.

The Mayor went on to say that the citizens may worry that since the City is exercising eminent domain on this property, is their own property safe. He said that the answer to that is yes because this is a once in a lifetime opportunity as right now, the property is unoccupied. The house is deemed uninhabitable. The owner is willing to sell it and has put this house on the market. It is not the policy of this City to take people's property where the people are living in it, and they don't want to sell it. The city is willing to give the owner a fair price for the property and so it works from those circumstances. The circumstance under which the city would ever use its eminent domain powers with a desirable piece of land is very, very limited and narrow. Here we have a willing seller and a property that is home to no one.

How do we know that a jury isn't going to award an outrageously large settlement above \$2.3 million? While there are of course no guarantees about what a court would do, we are on very firm ground. The appraisal firm the city used is highly regarded and they came up with that number. In addition, just last month the owner himself asked for a real estate abatement on the property. The property had been assessed for \$2.7 million and the owner came in and asked for an abatement. The city's assessing department granted him an abatement and the property is now valued, for assessment purposes, at \$2.312 million.

The Mayor went on to say they he couldn't stress enough the uniqueness of this property. He said it is a bit of country in an ever increasing urban environment. None of the surrounding communities have a resource like Crystal Lake. We now have an opportunity to make a resource that is of tremendous value and has great potential. We are now in the position to have that facility reach its full potential and really have a wonderful bathing and outdoor experience for a large segment of our population. The Mayor then said he was delighted when the Community Preservation Committee came in and approved this appropriation and made its recommendation to the Committee on Community Preservation. He hoped that the Committee will see its way to acting favorably upon this and he thinks it will be something that will be a testament to our foresight for generations to come.

Ald. Lappin asked the Mayor when the \$2.3 million appraisal was done. The Mayor answered that it was done in December. Ald. Lappin's concern was that market prices are dropping and if this takes much longer, it might be beneficial for the City to do a more recent appraisal. She asked that if we approve the \$2.3 million and there was a more recent appraisal, would it have to come to the Committee again. It was noted that the authorization is for up to \$2.3 million and then when you go in for the order and nothing changes between now and then in the Full Board, that will lock in the price. Ald. Lappin asked if it would be possible to have another appraisal. The Mayor answered that it would take a fair amount of time and he thought given the uniqueness of the situation and that time is of the essence, he thought we would prefer to stay with one appraisal unless we had some information that it was wildly out of whack. The Mayor did agree with Ald. Lappin that the market has softened some. The Mayor asked Dan Funk if another appraisal would be admissible in a court action. Mr. Funk reminded the Committee that any discussion about the appraisal would require that they go into Executive Session. Ald. Linsky clarified that the question being asked was whether with present market value, would we consider another appraisal. The Mayor strongly advised against it.

Ald. Lappin said that she saw that the Mayor was establishing an Advisory Committee that would conduct a community planning process to recommend that exact use. She wondered what the options of use would be – a beach, a beach house? Mr. Kimmell said that there would certainly be a beach and there is a lot of interest in having picnic areas, a structure for concerts. There's the whole question of what to do with the existing building. He thought there was some sentiment in the Committee that it would not be used for parking, although we didn't write that into the recommendation. It will be for passive recreational uses, uses that are consistent with beach front property. Ald. Yates asked if the Mayor had visited the site and the Mayor answered that he had.

Ald. Yates asked if City Solicitor Funk could explain the order because the order gives the owner the money, but he thought something else gives the city the right to use it. Mr. Funk said that the Board of Aldermen is statutorily authorized to make takings for public purposes. He said that the Board Order is going to cover a lot of different pieces. At the same time it will set the price of what those damages are going to be, authorize the taking by the City, and a few other little pieces that are on the memo. Ald. Yates said the item as laid out appears just to be authorizing the money. It says that the money can be used for purchase or eminent domain but it doesn't say that the City has the right to exercise eminent domain. Mr. Funk said that the docket item is worded broadly so that when the Mayor specifically asked for the eminent domain approach, that that was within the realm of the docket item. The CPC didn't feel that they wanted to bind the Board of Aldermen on this. The Mayor wondered if we had to have a specific Board Order authorizing the taking. Mr. Funk said that a few features would needed to

be added at this juncture because it was within in the Board of Aldermen's domain to do it and not the CPC's domain. Ald. Yates urged that when we get to that, it be done in the form of an 88-07 specifying that we are in fact authorizing eminent domain for that purpose. Mr. Funk said it absolutely had to be done that way.

Ald. Hess-Mahan had a non-value related question. He said there is a mortgagee here which brings up the question of foreclosure. His question was whether there was any urgency in light of possible foreclosure. Mr. Funk answered that there is no urgency in the sense that they get in touch with the first mortgagee and the governmental units that have the liens and they know this is in the works, so it's not like anybody is rushing to jump ahead of us. They know that once the city is interested in taking it, it doesn't matter who owns it, the city can still take it. So nobody is going to buy it in foreclosure knowing that anyway. Ald. Hess-Mahan then noted that any other buyer would have the same problem as the City of Newton would have in trying to settle with all this. Mr. Funk said it's a pretty un-sellable property at this point aside from what we're going to do.

Ald. Sangiolo asked whether the Board Order that was attached to the agenda represented the whole language. (The Ropes & Gray draft). Mr. Funk said that the Board Order can have a lot in it and what Ropes and Gray does is prepare the bonding language and the Order will be more than this. The aspect of taking includes more language. Ald. Sangiolo then asked if this Committee was dealing with eminent domain or if it was going to other Committees? President Baker said they'd done a taking before on Suffolk Rd., a small parcel on the edge of the conservation area. He said he'd have to double check to see what they'd done in terms of their process. CPC approves the money, but the eminent domain may go to some other Committee.

Ald. Sangiolo asked if after it clears through eminent domain, is it the intent that this property go to Parks and Recreation. Mr. Funk said that is why language needs to be added about the custody of the property and that's where the Law Dept. comes in. There are certain requirements that you want to make sure you hit with eminent domain taking and we're going to make sure that language is in here. This has all the good bonding language but it will have more before we get it to the Full Board. But in terms of what the Committee is doing tonight, it doesn't have to adopt this language, it could simply have to approve the recommendation of the CPC and at the end of the meeting, if it was inclined to move forward with this in the way it's been requested, the Law Department would provide added language about what's being taking and granting custody to the Parks and Recreation Department. Ald. Sangiolo asked whether Mr. Funk envisioned this Committee authorizing the taking and then if after research it should go to another committee. President Baker pointed out that it will go to Finance. Mr. Funk then said that the Full Board Order counts so whatever the Committee feels comfortable with as a Committee, they should just do it. He said that it's the final Board Order that gets recorded, not what happens here tonight. President Baker said that the question being asked was what the process was before it gets out to the Full Board. The Mayor said that whenever he files an Order, he never specifies the Committee saying it was the Board's domain to do so.

Ald. Mansfield wanted to address issues of timing and potential hurdles after the Board votes. The Mayor has been very thorough in going over the process and the possibly challenges. When the Board votes and once the Board issues that Order, the taking order can be recorded with the Registry of Deeds and that recordation is actually when the property changes hands. But when the Board votes, there are other means of appeal. Mr. Funk said that the idea is to wait 20 days and you have to record within 30

days. So that within that 20-30 day window is when we record this. The only appeal that could be with the Mayor would be with someone challenging the taking, and we've been pretty clear here that that's not very challengeable, and the other would of course be on the value. Ald. Mansfield wondered if there was any third party out there within the 21-30 days could challenge this.

Vice-Chair Parker stated that under Board Rules the President refers an item to Committee and the Board approves the referral and since these two committees, Committee on Community Preservation, and Finance are where they were referred, he didn't see why we needed to send it anywhere else. The Board rules do not specify where eminent domain items would go. There is no mention of eminent domain. He went on to say that they have ancillary approvals associated with an appropriation request before this Committee, so he thought they could send it to probably every Committee on the Board. Ald. Johnson is here and it could go to Programs and Services because it's the committee to which Parks and Rec. reports. He said the point is we can discuss the substance here, and the financial issues in Finance, so he didn't see why it needed to go anywhere else.

Chair Linsky wondered whether or not we needed to create a 'parens (2)' within the docketed item, just on the eminent domain issue, as compared to approving the money. Mr. Funk said that in the end it's just going to be one Board Order. He thought they'd be better off, if they're so inclined, to approve the recommendation as set forth in the document dated March 13th, and in addition to take the property be eminent domain and grant custody to Parks and Recreation. With that you will have done everything they've asked you to do plus specifying the taking and wording it properly. Ald. Yates asked when Mr. Funks said "addition" does that mean words should be added to the item or the item should be approved as amended as you outlined. Mr. Funk said he didn't think it needed to be amended because it is broadly enough worded. Ald. Yates said that he didn't think it was correctly worded. It says that we give you the money for this general purpose; it doesn't say we're letting you exercise it. For something that significant use of their power, it seemed to Ald. Yates that the item should so indicate whether by amending the item or whether by doing a parens (2). He felt it's a big deal and should be so construed in the records. Mr. Funk said that he disagreed. He said that the order, by saying "whether by purchase or eminent domain" it is authorizing the taking. Ald. Sangiolo said that it was only authorizing the money for the taking. Ald. Parker thought that creating a parens (2) would be the cleanest way of dealing with this. President Baker thought we shouldn't spend more time on this question at the moment because we're going to get to the substance and we've got the Law Department and we've got the issue we've got to discuss which is the financing and how this is going to work.. He hoped they could get into Executive Session so they could get to some of the things that are outstanding.

President Baker said he agreed with Ald. Yates in that ultimately you're going to need a Board Order that says that you're doing the taking and whether you do it with a separate parens (2) or a parallel item in another Committee is something we can sort out.

Ald. Parker said that for purposes of this session, he would like to move that we create a parens (2) of this item which is an eminent domain taking. Ald. Linsky said this motion would be held until the Committee came out of Executive Session.

Mr. Kimmell reported that the CPC was extremely enthusiastic about this project and they voted unanimously in favor of it. He said this is the type of project the voters had in mind when they enacted this statute. Crystal Lake is a unique resource. There aren't many densely populated urban areas that

have a lake for use. He thought that anyone who enjoys the lake is struck by the small size of the beachfront and the continuing saga over the retaining wall, the fact that a lot of the parcel where the waterfront is, is paved over. So this gives an opportunity to fix all of those problems and greatly enhance the public's use and enjoyment of the facility. He went on to say that they were very impressed by the outpouring of neighborhood support. It's not necessarily a slam-dunk that the neighbors would support it because it probably involves a lot more people coming and a lot more disturbance to the neighborhood. Despite that, with a couple of exceptions, the neighbors were extremely enthusiastic about expanding this resource even to people who don't live in the area. The CPC certainly thought long and hard about the eminent domain issue. He didn't think it was the sense of the Committee that they should be routinely authorizing the taking of land by eminent domain, but we were struck by the distinguishing factors that the Mayor outlines. The fact that the city was not kicking someone out of their house and has put the property on the market and all we're talking about right now is what the fair price is. Certainly everyone on the Committee would have preferred a consensual outcome of purchase. Mr. Hannon did come in during one of our meetings and talked to the CPC but really wasn't able to provide any substantiation for the amount of money he was looking for. It so vastly exceeded the appraised value that the CPC didn't think it had the ability to engage in much of a negotiation because, under the CPA, the city is limited to paying appraised value, we don't have the option of paying any more than that. So for all those reasons and others, the CPC did take the step to authorize either a purchase or the acquisition by eminent domain. The CPC really believed that this will be one of the crown jewels in the Community Preservation Act. Mr. Kimmell thought everyone is going to be very proud of it and very happy that we have this Act and have the ability to use money for these purposes. He thought everyone on the Committee felt that if they let this opportunity slip, they would regret it. He hoped that the Committee would support this recommendation.

Ald. Johnson asked the Mayor what the thoughts were on the cost to create this crown jewel. We know there is an aging bathhouse. We acquire the property with the CPA money but then we have demolition of the house and so forth. So what kind of that have we put into that? The Mayor answered that he thought part of the funds that we have available for capital use ought to be used to improve this property. Obviously subject to the Board's approval one of the things is a study on the city's capital buildings. Included in that is the bathhouse. It's nice to have a swimming facility that dates back to the 1920s. It is less nice to have a bathhouse that dates back that far. He definitely thought that we need to be looking at a portion of our bonding capacity in the future for this. The city also have elementary schools, fire stations and a whole parade of things coming but this is one of the important ones as well. Ald. Linsky asked if we had an assessment fixing the wall. Are there monies identified for that? The Mayor said that we do have funds for that. Mr. Funk answered that it would be around \$30,000 with DPW laborers. The Mayor said that in terms of the demolition of the house, the first thing in considering whether or not to demolish the house is public safety. If the Board approves this, when we take title what I would like to happen is have the Fire Chief and Inspectional Services examine the structure and determine whether or not its continued standing poses any kind of a safety danger. Ald. Yates noted that to make that determination you need to be cited in a third outside party.

Ald. Hess-Mahan asked if the total amount paid cannot exceed the appraised value for any project using CPA funds? Mr. Kimmell answered that that was true for land. He went on to say that his main concern was that there were other big ticket projects; Durant Kendrick is probably at the top of that list because of the price and the historic significance of it. He said his concern is whether or not there is enough money to do those other projects? Mr. Kimmell answered that the reason this project is possible despite

the other big tickets items is because CPC funds are not going to be used for the turf. That is going to free up the same amount of money to make this possible. The CPC recommended bonding the project over a 10 year period so the fund can afford to do this and Durant Kendrick. He further believed the CPC was going to meet all the affordable housing commitments and all the other things. There are probably a number of projects that are not going to go through this year, but this and Durant Kendrick are priorities. He added all targets would be met.

Ald. Parker provided background on the project as it resides in his ward. In expressing his strong support for the project, Ald. Parker wanted to be very clear that he would not be comfortable using eminent domain where someone wanted to live in the house even if it was currently unoccupied but was their intent to fix it up and move back into it. He believed the city had a tremendous opportunity to improve the public park area. He wanted to make sure the city put adequate resources into this to make it a fantastic park. He felt it may be necessary to redo the access to the site, probably a separate entrance and exit and to re-grade most of the site so that there isn't environmental runoff from the vehicles that are parked there down into the water. The bathhouse building is in major need of renovation. He and Carol Stapleton toured the site not that long ago. There's broken glass and ceiling hanging down. He didn't think it was not unrealistic to expect about \$1 million to redo this entire site, including the building. He thought it's important that the committee have that on the table when it votes on the item. He hoped the Committee would support this but not 'nickel and dime' this later because the people in the neighborhood who are supporting it are doing so with the understanding that the city is not going to create a traffic nightmare because there is inadequate egress to the site and there won't be an empty house sitting on the site indefinitely. He hoped it doesn't have to go to additional committees.

Ald. Sangiolo asked the Mayor if he would talk with ISD to see how structurally sound the existing structure was and whether he would also ask for some opinion from the Historic Commission. She thought there must have been some reason the Commission wanted to preferably preserve it - perhaps in hopes that someone would fix it if the City didn't come in. The Mayor said he couldn't speak for them but he thought the first abiding issue was safety. If the house is a danger, his inclination would be to take it down as quickly as possible. Ald. Sangiolo asked if the Historic Commission would be consulted on whatever structure went up in its place. The Mayor said that the answer to that depends. He would want to see what the recommendations of the advisory committee, the recreation commission, as well as the Board of Aldermen. Ald. Sangiolo said she was just concerned about the character of the area. The Mayor said he understood that and had not formed any opinion on that and it is something that in the fullness of time can be considered.

Ald. Yates said that it would make sense someone from preservation included on the advisory committee. Whatever value was placed on it for preferably preserved, may well relate to some details that were not ruined by the fire so what I think would make sense is that the Board of Survey making a decision about whether or not it should come down, if someone with some expertise on architectural salvage could determine what features of the building might be of interest to other parties and when the demolition is done, those features can be physically set aside and conveyed in some way to people who might have a use for it. He totally agreed with what Ald. Parker said about the use and the value. He would make a distinction that whatever improvements would be made with this site there should be a request for another CPA project since the CPA clearly does allow for improvements to property acquired with CPA money. Should plans be developed whether CPA is an appropriate funding source needs to be taken into account.

Ald. Mansfield said there is obviously concern about the structure on the site now and how it fits into the neighborhood and he's sure that the advisory committee would have access to records on this and find out what the Historic Commission's reasons were. He didn't know if there was anyone else around this table who has been in the house as he had. It was not the kind of fire that people knew it happened when it happened. Some people might have the impression that this is a burned out shell and it's unsafe, and it may not be safe because I don't know what the condition of the interior is and what damage the fire caused. But the house was not derelict and, in fact, before the present owner owned it and paid \$3 million for it on the open market, it was a very fine structure. Ald. Mansfield added that the city can't make certain decisions now but once the city owns the property it will be able to make important decisions and there will be options.

Ald. Linsky wondered the extent to which the CPC considered other CPA- related uses, including the preservation of affordable housing and possibility of open spaces in addition to a recreational project. Mr. Kimmell answered that it is certainly being purchased for that purpose. It's not for housing. You could probably make a case that it's for open space as well. The CPC spent a lot of time figuring out how it would go in. From a common sense perspective, the CPC primarily called it recreational. Mr. Kimmell consulted with Mr. McMillan and Mr. Dickson as to why the CPC called it exclusively recreation and opposed to recreation/open space. Mr. McMillan didn't remember exactly. Mr. Dickson recalled that the Committee went primarily what the definition of recreational space and open space was. Open space is intended under this set of definition to mean more conservation area, water resource, and this was more passive than active recreation. The predominant purpose is recreation although it also serves some open space. Mr. Dixon said that they didn't really get a chance to kick this one around because the CPC had been asked to fund something that they didn't really have any input into designing. Mr. Dickson went on to observe that if the CPC were to do it a different way, it might be holding more hearings. Instead, the CPC chose to go along with the Mayor's recommendation.

President Baker said that in other projects the CPC has asked for a community match, in other words, some other kind of contribution outside the City's general resources. He wondered whether there was anything considered here because there is a special benefit for this area? Mr. Kimmell said that he thought they did for the acquisition. Largely in part it's a function of timing and a desire to get this thing moving. He believed everyone anticipates a real possibility that they'll be another round of funding requests from the CPC relating to this maybe dealing with improvements. Maybe at that point it might be appropriate to think about community support, but for this one the CPC didn't want to slow things down to think about community support. The CPC thought the project was so compelling for Newton as a whole that it supported it without defined community contribution. Ald. Sangiolo asked if the Committee require that any improvements that are made on this parcel come back to the Committee since any need for additional money for it doesn't mean they'd necessarily come back to the CPA. Ald. Parker said that the bathhouse will have to go before Public Facilities and Programs and Services. President Baker thought perhaps Real Property Reuse. Ald. Linsky could not recall a similar circumstance. Ald. Lennon said that Ald. Sangiolo makes a good point but he thinks in cases like Stearns and Pellegrini we used CPA money for the design so the design came here and we took a look at it. But in this case we're not at that point yet. That was part of the money for the overall project was the design and the design documents so we kicked it around here and then Ald. Salvucci said it should be looked at in Public Facilities as well, so it went there. Ald. Sangiolo said she doesn't mind it going somewhere else but she's concerned that they're spending quite a bit of money. Ald. Lennon said that

the \$2.3 million is just for the acquisition and once it comes around that they're going to do more, if they ask for CPA funds, part of that would involve the design and we would take a look at that. Ald. Sangiolo said that even if it were City funds it would still have to go through a Committee.

President Baker said that the general question that Mr. Kimmell mentioned about the importance of speed is certainly for the taking, but that's a different question than the financing. It seems to me that the City can make the taking and acquire the property and the financing is part of the acquisition, but the actual payment can occur immediately or can be deferred depending on what happens. Mr. Funk said that actually we would need to have the money in place at the time of the taking. President Baker went on to say that he understand that sentiment and that his sense is that the public interest in this project, and I thoroughly support the use of eminent domain and I support the acquisition, but the public interest in the project, there's a significant part of this that is City wide and the Community Preservation funds are not themselves unlimited and I think it's important that you all have made a statement that you're not expecting to spend more than the appraised value and I think that's a CPA commitment that I support. If there are additional resources to be committed, I think those have to be looked at as a City wide priority.

Chair Linsky said that it was President Baker that raised the issue, a long time ago, about the potential use of eminent domain and CPA projects and here we are. He asked Mr. Kimmell whether there were other CPA projects that have used eminent domain. No one present thought so but that it was worth finding out. Ald. Linsky asked if the monies would be held in escrow since they have to be in place at the time of the taking. Mr. Funk said when you know to whom you're paying the money, you pay it to them and the appropriation will have been made. When you're not sure to whom you're paying the money, there are other procedures involved which can be discussed in Executive Session. The city was going to tender the money somewhere, in an interest-bearing account.

Chair Linsky said that in the archives project there was a portion for legal fees but noticed none here. Mr. Funk said fortunately, or unfortunately, the Board is not going to vote on this until it goes to Finance so it's several weeks away. Fortunately the CPC meets tomorrow night and he was going to ask for \$30,000 in legal fees for various reasons as to why those funds would be needed over the course of making the project work in terms of the acquisition itself. He was hoping the CPC will supplement the recommendation with a request of that nature so that by the time it gets to the Full Board it will have been made part of the request.

Ald. Linsky said that he was concerned about community contributions because the CPC quite rightly has made that a chief priority. The Mayor said that from his discussions with the neighborhood that there is some sentiment and willingness for that but he thought that's something that should be explored in any phase we have in terms of improvement.

Chair Linsky offered those from the public an opportunity to offer comment before the committee went into executive session.

Robert Fasik, 47 Forest Street, Newton Highlands made comments in support of the project he said there was a petition circulated through the neighborhood stating that they wanted the City to do this by any available means. There was also great interest in fundraising. They didn't have the time to put anything together but there was interest and given the chance they are anxious to contribute.

Ald. Parker said that the Newton Conservators have expressed some willingness to act as a nonprofit umbrella for collecting contributions and making some contribution of their own. The Newton Highlands Council also voted to endorse and participate. President Baker said that there are betterment districts that you can bill too. Ald. Linsky asked Mr. Fasik if the petition he referenced was submitted to the CPC. He responded that it might have been and Ald. Lappin said that the CPC memo mentions a petition signed by 400 citizens. It also says in the memo that the CPC has that in the records.

Henry Finch, 153 Winsor Road, Waban made the comment the many neighbors he has spoken to about this overwhelmingly feel this is an obvious thing to do. I just want to remind everybody not to think about it just as a local Newton Highlands, Newton Center, but this is for the whole City and we have to think of it in those terms, as a resource for everybody, not just the close neighborhood. The other thing was the general feeling was that we should obviously get it and get it for the fair market value – not more, not less.

Ald. Parker said that under the eminent domain statute there is a question as to whether we take the trees on the property. It's in the statute that you have to give the property owner the opportunity to remove the trees from the property. We have to specify whether we're taking them or not.

A roll call was taken to vote the Committee into Executive Session
7-0 Approved

A roll call was taken to vote the Committee out of Executive Session
7-0 Approved

Chair Linsky recognized a motion by Ald. Parker to create a parens (2) for the item. Ald. Parker said that the parens (2) is the taking by eminent domain in accordance with the March 13th recommendation of the CPC, including its trees.

Ald. Linsky said he would take a vote on the money item first. Ald. Yates said he assumed the first item is approving the CPC recommendation of March 13th. The first item is the money; the 2nd item is the taking. It was agreed they should be moved together – both the main item and the parens(2). Mr. Funk said he likes them together better because it adopts what they asked for, what they recommended and you're saying we're taking it that way.

Ald. Sangiolo said that it's also subject to be amended in Finance when you ask for the extra \$30,000. Mr. Funk said that was correct and will be parens (3). Ald. Sangiolo said that their Committee could accept that and it doesn't need to be a parens (3)

Ald. Linsky determined the motions would be combined into a singular vote. By a vote of 6-0 (Ald. Lennon abstaining) the original item as well as a parens (2) setting forth the taking by eminent domain of 20 Rogers in accordance with the March 13th recommendation of the CPC, were both APPROVED.

On a motion by Ald. Lappin to adjourn, the Committee, by a vote off 7-0, voted to adjourn at approximately 10:33 PM. having been called to order at approximately 7:51 PM.

Respectfully submitted,

Stephen M. Linsky
Chair