

CITY OF NEWTON

IN BOARD OF ALDERMEN

COMMITTEE ON COMMUNITY PRESERVATION REPORT

TUESDAY, JUNE 26, 2007

Present: Ald. Linsky (Chairman), Hess-Mahan, Lappin, Sangiolo, and Yates; Absent: Ald. Lennon, Parker, and Vance

Also Present: President Baker

Others Present: Gayle Smalley (Law Dept.), Cindy Stone (Director, Newton History Museum), Peter Diamond (Newton Historical Society), Charles McMillan (Chairman, CPC), Alice Ingerson (Planning Dept.), John Rodman (Chairman, Historical Commission)

Prior to taking up the agenda items below, Alice Ingerson of the Planning Department presented a quarterly update of the status of ongoing CPA projects as well as a preview of the program the Community Preservation Committee will be holding on June 27th to solicit public feedback on CPA-related programming .

NOTE: Ald. Hess-Mahan asked Ms. Ingerson about some projects in his neighborhood that haven't yet been completed. Some projects have punch lists and others seem to have not gotten off the ground. He said some community groups have expressed concern about the progress and he realized that the generic problem has been addressed by the hiring of project managers, but was interested in knowing more specifically what was happening.

Ms. Ingerson said that a lot of the PTO initiated projects were initiated without the understanding that some, or all, of the project would be subject to things like public bidding requirements. There was a meeting with Sandy Pooler and a number of PTO people. Some conclusions were that on the one hand, with the current submission and approval schedule, they said they can't get bids from the good contractors because by the time they know they have money, the contractors were already booked. On the other hand, they said they couldn't submit proposals any earlier because they're not hearing what the projects might be. She felt they had an obligation to explain to people that are new to the process that it really is a 3-year long process and that if they're in more of a hurry than that, they should look at alternatives.

Ms. Ingerson the CPC has endeavored to distribute projects around the City. She has made a suggestion to the CPC that they might want to also redesign the application or the tracking process so they can easily see whether they've bunched a lot of them in the same managing department or the same property owning department. She pointed out that there are sometimes too many projects in one department and they get gridlocked. She felt it would be a reasonable thing to say that if one particular department had \$1M in

projects that were not moving, they'd like them to clear through a quarter or half of that before they did another one on top. Another option would be to let the petitioner know that a particular department was pretty gridlocked. With the PTO, she didn't see many more of those projects coming through and the School Department has decided that they need to weigh in on those a little bit more.

Ms. Ingerson felt they needed a better process for project management. The issue was there were people who were being paid out of the administrative budget for the CPA program who were supposed to be managing the projects. However, she said she had to learn to manage them, who they are, what jobs they've agreed to do, etc. There was plenty more to be determined on all these projects and Ms. Ingerson said she needed to do more research as she was fairly new to the position.

Ms. Ingerson said she had sent out emails and press notices to the community inviting them to their meeting on June 27, 2007. It is meant to be an open feedback session. They're going to do the Strength, Weaknesses, Opportunities, Threats model and encourage people to leave comments on cards, speak during the hour they have, or send emails. She will then try to look for patterns and share them with the Committee going forward. She said the CCP would get a draft plan in September. Their guesstimate was to take the feedback and put it into a plan that the Committee works on in July. If they wanted an October or November deadline for proposals, they had to get the plan and application finalized very soon after Labor Day.

Ald. Hess-Mahan asked what the blue tape on the gravestones in the West Parish burial grounds was for. The project manager told the Committee that denotes the completed work. The blue tarp at the South Burial grounds was for protection of the site of the graves of the Revolutionary War as they are deteriorating and awaiting preservation. Ald. Yates noted that signs and fences should be done last and the historic graves done well before them. He was told that was the case. He suggested they talk to Boston to find out who they used to do the work as it was excellent. They said they were sending out RFPs for that work.

Ms. Ingerson was thanked by the Committee for her presentation.

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

#120-07(2) COMMUNITY PRESERVATION COMMITTEE recommending phase II funding for the Durant Kenrick Homestead restoration and rehabilitation project as a grant in the amount of \$1.27M. The phase II funding would be used to purchase a preservation restriction on the adjacent open lot. The CPC further recommends that the funds be appropriated under the control of the Newton History Museum (Jackson Homestead) and that certain terms included in the CPC recommendation be incorporated in the agreement between the City and the Newton Historical Society. [05-29-07 @11:02am]

ACTION: **APPROVED 5-0**

NOTE:

The Committee was joined by Charlie McMillan, Chairman of the CPC (Community Preservation Committee)

Community Preservation Committee Endorsement

Mr. McMillan reiterated that the CPC supported this project very strongly. They thought it was a very clever and unique way to put a project together. This second piece was essential to the project because if it was not approved, then the project could not happen. Mr. McMillan said that in the Finance Committee, Ald. Coletti had been trying to come up with some alternate method of financing, but he hadn't heard if anything had developed. He stated that this was a request for \$1.27M to purchase an historic preservation easement on the lot that is next to the Durant Kenrick house. The appraisal has established that it was worth that amount of money, and the CPC thought that it was an excellent use of funds that would provide a long-term, educational, historical resource for the City of Newton.

Legality of CPA (Community Preservation Act) Fund Use

Ald. Lappin asked Gayle Smalley of the Law Department about the legality of using the CPA funds to purchase the preservation restriction. Ms. Smalley said that it was legal. Ald. Lappin was concerned because the written legal opinion said that the purchase price "appears to comply" and the word "appears" didn't sound definitive to her. Ms. Smalley said that their analysis showed that it was in compliance and this language is a pattern that is used in opinions. In any situation, someone may come forward at some time with information they were not aware of at the time of their analysis, therefore, they always state the facts as they are known at the time.

Ald. Lappin asked about the definition of real property interests. Ms. Smalley explained that the CPA provides definitions of words and they work their way through the definitions and that's how they determine if they are in compliance. Ms. Smalley stated that they were in compliance. She explained that there are a number of ways involved in financial transactions with property interests. One example would be the affordable

housing ownership program. The reason someone is able to buy at a lower rate is because the city buys down the value by buying a restriction. Once the property is encumbered by a restriction it changes the way it functions and the value. You then calculate what a property is worth before and after it has a restriction and subtracting one from the other results in the value of the restriction.

Ald. Yates said he was concerned, given what was laid out before, the purpose of selling off this interest in the property was, in fact, to establish a long-term maintenance and programming pot for a property. Those would not be legally proper to fund directly from CPA. He said that the point that was raised on this topic at the last meeting was the concern that with this intermediary mechanism, they were running the risk of someone finding this legally questionable. Ms. Smalley said that this use was not legally questionable.

President Baker said that a way to frame this was that they're getting two for one. Right now, the acquisition is worth what's its being paid for because they're getting the preservation of that site including the house and grounds, etc., against the risk of it being turned into something else over time. Ald. Linsky pointed out that this money is just for the parcel. President Baker said that if in fact the proceeds (and these proceeds are not all that is necessary to run and operate the building - \$1M is being raised by the community) were being planned for this purpose, it's not that this is a condition that it's being used for this purpose, it's saying in effect that this is a bonus, something else that makes it worthwhile. The most important thing is the preservation, and they're not planning on spending it somewhere else, they're planning on spending it on this project - they could spend it anywhere else they want in the City.

Reversion Rights

Ald. Hess-Mahan brought up the issue of incorporating reversion rights in the unlikely event that the Historical Society dissolves or otherwise ceases to exist so that the City automatically gets the property. He assumed that is what would happen. Ms. Smalley said that nothing like that has happened in the City in decades. The Arts Center was conveyed by the City to the organization that runs it, and it has a reverter in the contract. But with that example, it was City owned and that was a crucial difference. Maybe they could have an offer of first refusal, an option, or some sort of future interest in the deed, but it would take some work to get to that point. And if they did get to the point where the City held a legal or equitable interest in that property, that would affect the Attorney General's jurisdiction and not allow the AG to decide how it will be dissolved and the assets dispersed. She said that it was a very fine question. There was discussion in Finance about various kinds of interests but nothing specifically emerged.

It was asked that if the City had a reversionary interest would that provoke some public bidding process by the people that held it in the interim. President Baker said it might because it's not the City holding onto it. It's a property that is owned by someone else being donated to the Historical Society and the City would be asking for 3rd party rights that it doesn't have. The City would be in a position through the Historical Commission

of enforcing the preservation restriction. But that was different from being able to acquire the property, and the problem was that when you have someone with 3rd party interests that can occur at some point in the future, it runs the risk of violating the rule against perpetuity which says you can't have interests that have remote chances of occurring in 3rd parties. Then there's the whole question of whether it occurs within a certain statutory period and it can be real mess. Therefore, President Baker felt it was a bad idea to take that route. The other concern he had was that if the Historical Society gets to the point, in the future, that they may come back to the CPA or go to a bank to borrow money, a lender may look at that and not like the idea of dealing with some strange, floating opportunity in the City in terms of protecting its own security interests. He didn't feel that it was worth complicating the project with no real benefit in return.

Ald. Yates said that the City owns the easement, and the Historical Society owns the property and neither entity will be going away.

Ms. Smalley said that if it was the will of the Board to have some sort of property arrangement called an option, right of first refusal, or a reverter, whereby the ownership in the future comes to the City either automatically or through some mechanism, and they wanted to urge the Jackson Homestead and the Mayor to add some further protection through a resolution, that might be the way to do this.

Revised Board Order

The revised Board Order includes a paragraph of language that is used whenever real estate is being purchased. The Law Dept. included both property pieces in this language. It is the same language that was used for Kessler Woods for example.

President Baker said that one of the reasons the Historical Society own this property was that they would ensure a better level of stewardship than the City. The irony was not that the City would want this property, the problem would be that it would not want this property because it's got other things to deal with and will not have the resources to take care of it. The Historical Society might be in a position to say they'd rather have a put, than the City have an option.

Comments from the Public

Ald. Linsky invited members of the public to comment on this item.

- Constance Kantar of 382 Kenrick Street said that she is tremendously in support of this project and believe it's a great asset to the whole community especially the children learning about the City's history and for others studying colonial history. She felt that the preservation of the lot was pivotal to the success of the project as it's the only remnant of the 90-acre nursery and it also provides a wealth of relief in open space.
- Dena Rashes of 394 Kenrick Street added her support to the project as well, as a neighbor and a lover of history.

Property Manager Concerns

Jane Zanichkowsky, who is the current property manager of the Durant Kenrick homestead, sent an email to Ald. Linsky with concerns about the upcoming plans for renovation and reconstruction:

- Vines: Ald. Yates asked about the vines that Ms. Zanichkowsky mentioned as being removed. Director of the Newton History Museum, Cindy Stone, said the vines are in the area where they plan to have a terrace so that people can do horticultural activities and also where they can have wheelchair access. The vines would obstruct those plans. Roger Avery planted those vines in honor of his parents. He was showing them to some members of the Historical Society recently and he didn't seem too concerned that they were going to be gone. These vines are 45-years-old and not part of the original homestead.
- Barn: Ms. Zanichkowsky was also concerned that the barn was going to be removed. Ms. Stone explained that it had to be moved to be removed to make way for the parking that was required. Ald. Yates asked if the barn could go somewhere else and Ms. Stone pointed out that it is not historic and is being overstated as a "barn". It is in fact a one-car garage.
- Ell: Director of the Historic Commission, John Rodman, explained that the principal portion of the ell in the home is going to be replicated and made more sturdy than what is currently there. The foundation is a rubble type right now and the ell is sinking. Building a full foundation will prevent that from happening as the new portion is built. It is a simple clapboard design. It will also allow an elevator to be added and access to the new basement for storage.

Peter Diamond of the Newton Historical Society said that the property manager loved the house, worked hard to maintain and had a lot of respect for it, but she doesn't want to move and was looking at her interests rather than the long-term health of this property and what it can offer Newton.

Financing

Ald. Linsky expressed interest in having this part of the project funded through bonding. He felt that they have been pretty judicious in the use of bonding for funding. This will be the first project out in the new fiscal year and the City has favorable rates and conditions. Ald. Yates said that there would still be interest to be paid that would ultimately have to come out of the CPA. Ald. Linsky felt that funding a portion of such an expensive project with bonding should be considered. He asked the CPC that they discuss this at their meeting and then they could discuss it at the Finance Committee with Ald. Coletti. Charlie McMillan said that they had not really talked about it as they were

concerned that they bond too many things and would end up eating up their future. He agreed that it was something to consider and they would bring it up at their next discussion.

Expressions of Support

President Baker read a letter that was sent to the Chairman of the Committee from Ald. Schnipper and Vance in support of this project as they were unable to attend the meeting. President Baker expressed his strong support of this project as well and felt it was quite a remarkable opportunity for the City. He felt that the applicants have done a tremendous amount of homework and that any issues could be resolved. He did get a call from a couple of constituents with concerns that the museum either might be too much of a success for the site, or that it wouldn't be a success and thereby not worth the expenditure.

Ald. Yates expressed that he still felt a certain amount of cognitive dissonance around this item. He felt they were paying people who don't want to develop it, for the right not to develop it. He has received a number of calls from Ms. Stone and others to tell him that this is a fairly common practice in land and historic conservation so he's willing to set that aside.

He did want to make some recommendations:

- Emphasis in programming on the Committee of Correspondents. Who were they writing to and how did it fit into the Revolutionary frenzy?
- On the War Memorial there are 2 Privates named Durant who did in fact serve in the war. They served on the Battle of Lexington and Concord. He felt it would touch the minds of the students and other residents of the City to find out certain facts: Was the rider actually Paul Revere? How old were the Privates Durant? Did they muster somewhere else in the City or go on their own to Lexington and Concord? How did they get there?

He felt that making this as real and visceral as possible was essential: Evoking the echoes of the meetings of the Committee of Correspondents, visualizing the boys (men?) heading on out to battle and all the details that go with that.

He said he still had qualms about this funding mechanism but he felt that because his 6x grandfather is also on the War Memorial wall, he will support this item "as the repayment of Lt. Samuel Richardson to those fine lads, the Durant Brothers."

Ald. Hess-Mahan said he was very proud to make this motion and had supported this project from the beginning. He found great pride growing up in Medway which had a stake in the King Phillip war. It was a thrill to him and he said his wife and children take pride and feel investment in this community as real history took place here. His concern

was that he didn't want to tinker with the proposal or the project too much as it seemed to work as presented.

Ald. Lappin said she thought it was a wonderful project and was glad they could preserve the land. Her only concern had been a legal one, and she was satisfied with the advice of the Law Department.

Ald. Linsky also added his support to this project. He thought that Newton did not have much from this period and thought it important to preserve what they did have. Ald. Yates said there was probably more than they thought and hopefully this would be a gateway to others in the City. He said he hoped that anyone that might go to Durant Kenrick would get a brochure with a map to the south burial grounds, to the muster grounds in Newton Centre, and other historic sites around the City.

Ald. Hess-Mahan moved approval and the Committee voted to approve this item by a vote of 5-0-0; 3 members absent and not voting (Parker, Lennon and Vance).

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

#276-06 COMMUNITY PRESERVATION COMMITTEE recommending that the sum of \$2,253,000 be appropriated from the Community Preservation Fund for purposes of funding the *Newton South High School Synthetic Turf* recreation project.

ACTION: **NO ACTION NECESSARY 5-0**

NOTE: Ald. Linsky noted that matter had been on hold and was now before the Committee for final action.

Ald. Lappin moved for a vote of No Action Necessary and the Committee voted in favor of this motion by a vote of 5-0-0; 3 members absent and not voting (Parker, Lennon and Vance).

Motion to adjourn by Ald. Hess-Mahan. Following the Committee's voice vote in favor, meeting was adjourned at 9:05 PM.

Respectfully Submitted,

Stephen M. Linsky, Chairman