

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE REPORT

MONDAY, APRIL 9, 2007

Present: Ald. Lennon, Vice Chair; Ald. Linsky; Salvucci; Gentile; Parker; Schnipper; Lipof

Excused/Absent: Ald. Coletti

Also Present: Mayor David Cohen; Ald. Hess-Mahan; Dan Funk, City Solicitor; David Olson, City Clerk; Ken Kimmel, Community Preservation Committee.

REFERRED TO COMMUNITY PRESERVATION & 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]
COMMITTEE ON COMMUNITY PRES APPROVED 6-0-1 (Lennon abstaining) on 3-27-07

ACTION: APPROVED 6-0-1-1 (Ald. Lennon abstaining; Coletti excused)

NOTE: Mayor Cohen, Dan Funk and Ken Kimmel joined the Committee for this discussion. Mayor Cohen opened the meeting by explaining the need and the approach being taken to acquire this property by eminent domain. State statute requires the city to have a qualified appraisal of the property. The amount of the appraisal needs to be appropriated prior to the recording of the taking. Two of the reasons behind taking this property by eminent domain are that 1) the property was on the market so it is safe to say we have a willing seller (additionally, the home is unoccupied) and, 2) it will be become and be utilized as a public use. The City of Newton is not in the business of removing people from their property/homes. We will be paying fair market value for this property based upon the appraisal that we have gotten. The value determined in that appraisal was \$2.3 million. Currently, the property is assessed at \$2.314 million. The property owner requested and received an abatement bringing the value to that amount. The property was assessed by the city at \$2.7 million.

Additionally, the reason the city has not negotiated a traditional purchase and sale agreement is because there are \$12 million in liens against this property. An agreement must be reached with each lien holder who wasn't fully satisfied to release their lien(s) in order to reach agreement on a purchase & sale. If one lien holder did not agree, it could tie the process up in court. It is not practical from the city's standpoint. Under eminent domain, non-governmental liens are cut-off by operation of law. Those debts will continue to exist but are the responsibility of the current Rogers Street owner, not the city. Those lien holders would seek payment from him through any means at their disposal. By going the eminent domain route and meeting certain procedures, the

city will be able to clear the governmental liens with the IRS and DOR through negotiated agreements and commitment letters. These negotiations entail these two government entities releasing their liens. The \$2.3 million would also be applied towards the remaining liens. The Mayor and City Solicitor made it clear that the approval of \$2.3 million of public money would not be ‘harnessed’ with outstanding government, or non-government, liens.

Mayor Cohen went on to talk about a potential court challenge from the owner. He informed the Committee that if the owner challenges the taking in court, there are primarily two challenges: 1) Validity of the taking and 2) How much you paid for it. Mayor Cohen and Mr. Funk feel very confident that our case would be strong. There will be no challenge on the taking because the use will be public and it will supplement and enhance the recreational purpose of Crystal Lake. As far as price, currently, 1) there still has been no appraisal received from the owner, 2) the assessment is \$2.314 million and 3) our qualified appraisal came in at \$2.3 million.

Ken Kimmel stated the CPC voted unanimously for this. It would be one of the crown jewels of the CPA program and is exactly what folks wanted when this was enacted. The CPC preferred to go the traditional route but found it impossible to do so because of all of the surrounding issues relayed by the Mayor. There was some uneasiness about the ‘taking’ but the case was made by the Mayor that the home was unoccupied and was on the market.

Some of the questions and comments raised by Committee members were as follows:

Ald. Schnipper supports this initiative. She wanted to understand if the acquisition of 20 Rogers Street would be part of the ‘recreational program’ anytime soon at Crystal Lake. There are issues regarding the house, additional needed funds, etc.

Mayor Cohen explained the wall will be fixed immediately with in-house staff but the new Advisory Committee will make most of the decisions regarding future use. They will work directly with the Parks & Recreation Commission. Mayor Cohen explained this is #1 priority of the Commission. Any improvements will have to be a part of the Capital Improvement Program. Mayor Cohen went on to discuss a few aspects about the house on the property. He stated he will be having Building and Fire Inspectors review the integrity of the structure to determine if it is unsafe and needs to come down. If in fact it needs to come down, he has estimated the price at approximately \$50,000.

Ald. Lipof supported this initiative and feels that it is a great thing for Newton. He stated that this property is the “poster child” for an eminent domain taking.

Ald. Gentile had a number of questions. He questioned the Mayor’s definition of ‘on the market.’ How were we sure? We were informed the property was listed with Raveis. He asked if we had reviewed the appraisal.

David Olson was able to provide a copy of the appraisal for Committee members to review.

Ald. Gentile also wanted to know how the appraisal was done. Was it done with a habitable home on it or just for the land?

Dan Funk explained the appraisal was conducted with the house as not habitable.

Ald. Gentile wanted to understand what protection we were getting for Newton taxpayers in relation to the liens.

Dan Funk explained we would be getting 'commitment letters' from both the IRS and DOR regarding the city being absolved from the governmental liens.

Ald. Gentile also wanted to know if the issue does go to court and we subsequently have to pay more, what funding source would be available to cover the cost.

The Mayor stated he was unsure at this time about future funding.

Ald. Gentile indicated his support for future additional funding coming from the CPA fund, not the General Fund. He feels it will ultimately end up costing more than \$2.3 million. He also asked about the ratio of debt service in CPA projects as compared to the debt service ratio overall. He said he thinks it would be a good exercise for the CPC to review and analyze their approach with regard to borrowing on current projects and projects in the future. He also stated the potential concern about the future of the CPA and our ability to pay for debt service if the Legislature, at some point, decided to no longer fund the program. Ald. Gentile then asked about the last abutter to Crystal Lake. He wanted to understand if that owner understood all of the expansion possibilities being discussed. It was explained that the owner in question was in support of this initiative.

Ald. Linsky agreed with Ald. Gentile. He feels the CPC needs to take a look at their overall borrowing plan. He also inquired about legal fees and bonding costs for this initiative.

Mr. Funk stated he inadvertently omitted the legal fees when this funding request was put together (there will be a subsequent request docketed to cover the legal fees). He would be requesting about \$30,000 for this. It will be going through CPC and will get to this committee soon. He also stated the bonding costs would be a few thousand dollars.

Ken Kimmel, CPC took a few minutes to address the CPC methodology and approach to borrowing. Borrowing has allowed them to be a bit more flexible and actually spread out the funds. He realizes the Finance Committee concerns and is happy to relay to the CPC that they need to perform some analysis.

Ald. Parker discussed his thoughts on this. He feels there could not be a better use of CPA funds. He stated he has had discussions with the property owner and it is his understanding the owner wants the city to take this by eminent domain. He talked about how this project will work well for the city, not only recreationally but also environmentally. He also stated he is looking

forward to working with the Advisory Committee on future decisions on the integration of this acquisition with the old Crystal Lake property.

Ald. Salvucci reiterated he would like more analysis done on the CPC borrowing & debt service. He also asked about using CPA funds for the demolition of the house.

Mr. Funk stated it would be more beneficial to take another evening to discuss that approach.

Lastly, Ald. Salvucci indicated that his concern was the same as that of Ald. Gentile that if the CPA is not funded by the state any longer in future fiscal years, we are on the hook for some of these projects & costs.

Ald. Lennon had a number of questions & clarifications. Much of the information has been answered in other committee meetings but wanted to have the information on the table for the benefit of Finance members. Finance Committee members have already asked some of the questions he had. The first question was whether there is any law, regulation, statute or ordinance requiring the city to have more than one appraisal.

Dan Funk answered we only needed one “qualified appraisal.” Ald. Lennon also wanted to know if there are funds in the upcoming FY08 budget for maintenance or management of this acquisition.

Mayor Cohen stated there are not funds except for the repair of the wall. The current plan for the wall is the plan approved by the Conservation Commission. He will wait for the recommendation(s) from the soon-to-be-established Advisory Committee.

Ald. Lennon feels that we should have the commitment letters from the IRS and DOR in hand by 4/17. Also, if this is challenged in court, do we need to hire outside counsel and what sort of length of trial and cost are we looking at?

Dan Funk stated this could be handled in-house. To date, we do not have an appraisal from the current property owner. The current owner cannot make a case without a counter appraisal. The appraisals would be shared during the ‘discovery’ phase of a court proceeding. Mr. Funk stated it is a bit premature to tell how this would play out.

Ald. Lennon also inquired about private funding for this application. With virtually every CPA application, there has been the requirement to have private/neighborhood fundraising as part of the funding plan. There is no private fundraising within this application.

The Mayor assured the Committee there is widespread support for this initiative throughout Newton and because of the timing of this; there wasn’t the possibility to have something ready. A neighborhood group has been formed and the Mayor is extremely confident that once the pieces fall into place, we will recognize very reasonable private donations towards this.

Ald. Lennon also wanted to know the status of the timeline requested by Ald. Johnson in Programs & Services. The Committee briefly discussed the timeline from here on. If an affirmative vote prevails on April 17, by the rules of the Board, there is a 20-day appeal period. After that period, we have 10 days to record the taking at the Registry of Deeds because the recording needs to be done within 30 days of the Board vote. Once recorded, we take title to the property. In order to make the necessary repairs to the wall and have the Lake area ready by the end of June, we need to start in May. We would be within this schedule having this pass on 4/17.

Mr. Funk stated he would follow up with Ald. Johnson to clarify her request.

Lastly, Ald. Lennon asked about the role of the Historical Commission moving forward.

Mr. Funk stated there are no issues involving the Commission.

Ald. Parker moved approval of the item. With no further discussion, the item passed 6 in favor, 0 in opposition, Ald. Lennon abstaining and Ald. Coletti excused. Ald. Lennon abstained from voting at this time based on the fact he would prefer to have the letters from the IRS and DOR in hand. It is hoped we could get some assurance from these two agencies in some fashion prior to the full Board vote.

REFERRED TO PROGRAMS & SERVICES, COMMITTEE ON COMMUNITY PRESERVATION & FINANCE COMMITTEES

#88-07(2) COMMITTEE ON COMMUNITY PRESERVATION recommending that 20 Rogers Street, including trees and structures on the property, be taken by eminent domain in accordance with the March 13, 2007 recommendation of the Community Preservation Committee.

**COMMITTEE ON COMMUNITY PRES APPROVED 6-0 on 3/27/07
PROGRAMS & SERVICES APPROVED 5-0 on 4/5/07**

ACTION: APPROVED 6-0-1-1 (Ald. Lennon abstaining; Coletti excused)

NOTE: This item was discussed in conjunction with item #88-07 above. Please refer to the comments detailed under #88-07. Similarly to the vote on #88-07, the Committee voted 6-0-1-1, with Ald. Lennon abstaining and Ald. Coletti excused, to approve this item.

REFERRED TO COMMUNITY PRESERVATION & 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]

COMMITTEE ON COMMUNITY PRES APPROVED 7-0 on 3-27-07

ACTION: APPROVED 7-0 (Ald. Coletti not voting)

NOTE: David Olson and Ken Kimmel joined the Committee for the discussion. It is a total request for \$150,000. This item has been broken into two phases. The focus is to conserve,

preserve and restore documents and books we have. In this first phase, we will be focusing on urgent priority restoration, about 21 volumes of records, and also purchasing adequate & appropriate shelving in the vault in the Clerk's office. The basement is currently being used and we want to move these records from the basement because of security, dampness & mold. Phase II will incorporate some fireproof cabinetry to store Aldermanic records as well as restoration of records that are not deemed urgent priority.

The Phase I urgent records will be de-acidified and placed in Mylar sleeves. Phase II will concentrate on the same procedures for the records as Phase I but will also incorporate work on the bindings of the books. At the time this is done, the books need to be taken apart and the records will be digitally scanned and will then be available electronically.

Ald. Salvucci wanted to know why the Clerk's Office was not given the \$150,000 all at once. He questioned the necessity to break this project out into phases.

Mr. Kimmel explained that discussions with David Olson revealed it could be done this way and provided more flexibility for the CPC.

Ald. Salvucci also wanted to know who was doing the work.

Mr. Olson stated that there are only a few companies that do this type of work, and a representative from one of those companies helped him with the cost estimate for the CPA funding application.

Ald. Linsky mentioned the next phase would essentially be July 1 so it will be relatively soon. He also wanted to understand what is required of us with regard to the preservation of these records and what is it that we are doing basically "above and beyond" any mandate. He wanted to clearly justify the use of 'historic preservation' under CPA funds.

Mr. Olson explained that the Clerk's Office is mandated by MGL to preserve these records in perpetuity. We are going a step beyond just keeping it in the vault. Our intent is to restore and make available online for the use of citizens.

Ald. Gentile wanted to know if \$150,000 was enough to do what we needed to do to preserve these records. He questioned whether there would be a need for the Clerk to return with subsequent funding requests.

Mr. Olson explained this will not take care of ALL records that need to be done but should cover all of what we need to do in the basement and Clerk's Office. The records in the two areas are birth, death, marriage, Aldermanic Committee reports & meetings from 1985 through today. There are other records in the fireproof vault in the Library. They are not utilized as often as the records we are currently restoring.

Ald. Gentile also wanted to know if any of this information is currently backed up.

Mr. Olson stated we have the original records (not backup books), that are not indexed but that is the system. The digital records will serve as a backup for loss of the information.

Ald. Parker said he would support this but felt that it is a normal course of business and wasn't convinced CPA funds were a good use. CPA funds should be used for "special things." He also stated the original version of the CPA would not have allowed this. It is only an allowable expense due to an amendment of CPA legislation for historical documents.

Ald. Salvucci moved approval of the item. With no other discussion, the item passed 7-0, with Ald. Coletti not voting.

All other items were held. The Committee adjourned at approximately 9:20 p.m.

Respectfully Submitted,

Scott F. Lennon, Vice Chair