

Newton Schools Foundation Naming Rights Campaign

Additional Frequently Asked Questions

June 7, 2012

In the past, when the City has disposed of real property by sale or lease under Section 2-7 of the ordinances, we cannot recall it paying a commission or fee incident to the disposition. Since the naming right will be a durable right attached to real property of the Schools, does Section 2-7 apply to the sale or lease of this right, as it has in the past for school buildings themselves? Even if not, what is the rationale for providing for payment of expenses to the Newton Schools Foundation, and if there is a service to be provided, is it subject to public bidding?

NSF is not subject to public bidding because we are not contracting with the City of Newton. NSF is not contractually bound to fundraise. Further, we do not believe that the donations given in conjunction with naming plaques being placed on or in various school facilities is considered to be the sale or lease of real property as a matter of law. We know of no legal authority stating otherwise, and our understanding is that the IRS considers these to be “donations” rather than “sales.” With respect to the interpretation of the ordinance, that should be a question directed to the city Law Department. Section 2-7 says “Whenever a vote is taken or a policy decision has been adopted...to declare any city owned real property or portion thereof available for potential sale or lease...” We do not believe that this is such a circumstance.

If the City or School Committee did insist on using a bidding process, NSF would come in as the lowest bidder given that the professional fundraisers assisting the NSF, as well as the NSF’s board members, are all donating their time.

Newton has a history of naming school buildings for figures important to Newton history, e.g., Horace Mann School, Brown Junior High, or the Angier School, named after a Waban resident who won the Distinguished Service Cross in World War I, or the neighborhoods involved, e.g., Newton North High School, or the Oak Hill Middle School. The sale of naming rights apparently does not involve naming or renaming existing buildings. (For example, the policy indicates that Newton North or South would not be renamed.) What school property naming rights are “not for sale” and how is that determined and made binding on future School officials?

NSF is focused on selling naming rights for the larger spaces and classrooms/labs, frequently used in each high school. Not every space is targeted for naming rights. Also, not everything on the list will be named. If, in the future, other school officials want to utilize naming rights, they would have to go through the same review and approval process as NSF is currently doing.

The sale of naming rights anticipates perpetual naming for individuals and term naming for corporations. How many assets are available for disposition, at what prices, and how long will the fund-raising go on?

The NSF capital campaign will run for three years. NSF has developed a donation amount list for named spaces at the two high schools. The process will include establishing a public list of spaces available for naming, anticipated donations for spaces and methods for modifying both the spaces and the donations.

In the case of individual donations, the Newton Schools Foundation has, like other organizations receiving contributions, provided donors the following language: “All gifts are tax deductible as provided by law; no goods or services were provided for this contribution.” This language is apparently in response to the concern that a donation has to be freely given, and not in exchange for something of value. How can individuals making a payment in return for naming rights be assured they can successfully deduct the amount of the payment as a charitable contribution?

Individuals making a contribution to the Newton Schools Foundation for a named space will receive an acknowledgement letter from the Newton Schools Foundation indicating the date and amount of the gift. As a 501(c)(3) we have every reason to believe this is a tax deductible donation. This is according to IRS Code 90-12, 1990-1 CB471, as stated in Publication 526. If a donor has specific questions, they need to consult with their tax advisor.

In the case of a corporation buying naming rights for a term, issues of charitable deduction may be moot because the cost can be deducted as a business expense for marketing or public relations. In that case, however, how does the Foundation intend to address the implicit endorsement of that corporation and its activity?

There is no endorsement with naming rights by NFS, NPS or the City of Newton. The Newton Schools Foundation intends to provide Individuals, Foundations and Corporations with the same type of recognition in the form of a plaque or signage for their donation towards a particular named space.

Our screening process is the most comprehensive when compared to other communities. We have three screening levels before any pledge is approved.

1. NSF
2. School Committee
3. Public Hearing.

There was no ordinance but a vote was taken to accept the Balsamo Park gift. There is at least that precedent for doing it without an ordinance. An ordinance might be a good idea generally, but we would not like the present program to wait for it.

Please also see the Newton School Committee's October 2010 Fundraising Policy, which states in relevant part: *"This policy is intended to ensure that names and/or other wording associated with school facilities will promote and/or be consistent with the goals of the Newton Public Schools (NPS) and the various messages that NPS is interested in conveying to students and to the public. This policy is also based upon the belief that it is important that the students and the public know of the many contributions of civic, business and other leaders both in Newton and beyond, and that this knowledge may further educational goals within the school system. It is the School Committee's further intention that names and/or wording that would tend to undermine the intended messages and goals of NPS, such as those that would interfere with NPS's basic educational mission, those that are inconsistent with the fundamental values of public school education, or those that compromise the safety of students and/or faculty, shall be avoided."*

The naming rights policy can be changed by a subsequent Mayor, School Committee, and School Foundation, since it is memorialized in a memorandum of understanding and not a contract. Should any of the safeguards be memorialized in an ordinance? (See generally, the report of the Committee on Naming Public Assets of the Town of Wellesley, and Article 5.5, 2008.)

It is unnecessary to use an ordinance for many reasons:

1. The MOU is already a binding document;
2. If either side wants to change the process they can simply stop raising or accepting funds and renegotiate;
3. Is detrimental because it decreases the flexibility of all parties.

Once naming rights are available, even with a written policy, will any interested individual, organization, or business (with the latter having increased rights because of the Supreme Court Citizens United decision regarding campaign finance laws) have a First Amendment right to buy such a naming right? (See generally, Joseph Blocher, School Naming Rights and the First Amendment's Perfect Storm, 96 Georgetown Law Journal 1 (2007).)

Kurt Kusiak, former School Committee member, consulted with Professor Joseph Blocher at Duke University Law School back in 2010 regarding these 1st Amendment issues, and incorporated Professor Blocher's suggestions into the School Committee's naming policy in order to avoid any problems and ensure the School Committee will retain control of naming rights.

How will the naming rights be allocated among prospective purchasers desiring the same right?

Donors are accepted on a first come first served basis. Spaces are reserved as soon as a donor makes a proposal. In the unlikely event that two donors simultaneously approach NSF, then competitive bidding will be used.

Will naming rights be reversible if the named corporation or individual gets into public difficulty, like Enron did in Houston, and if so, how?

Yes. The naming rights contract, signed by all donors, will contain a caveat that the School Committee can review any named space for appropriateness in the event that a donor business is purchased or has a newsworthy event. Special conditions are clearly outlined in individual contracts. Standard criteria are utilized.

Will the sale of naming rights involve formal contracts, and if so, will they be reviewed by the Newton Law Department?

Yes; there will be a formal, signed contract for every named space. The Newton Law Department will review and advise on the contract template before it is used.

If the community wants to name a space for an admired member of the community, would the community have to BUY the right to name a space after such a person?

The School Committee retains the right to name any space in honor of anyone the School Committee chooses.

Would the total campaign dollar goal change if naming rights were not a key component?

Yes. All highly successful Campaigns have a naming rights component. Naming rights gives donors a special incentive and reward for their donation. Naming rights range from names appearing on a commemorative brick walkway to a name appearing on a building.

Eliminating the naming rights component could reduce a campaign's total goal by as much as 90 percent. Typically 90 percent of the monies raised in a campaign are received from 10 percent of the donors. A campaign with a naming rights component usually raises 90 percent of its total through naming rights purchased by 10 percent of total donors.

Will sufficient number of rooms be left unnamed so future donors can participate?

There are over 250 spaces to be named across the two Newton high schools. NSF does not expect to name all spaces during the three-year campaign.

What are some examples of acceptable signs and non-acceptable signs in a campaign with naming rights?

Since the School Committee needs to approve all named gifts, the likelihood of a non-acceptable sign appearing in either Newton North or Newton South High Schools is negligible.

Examples of unacceptable names are: "Budweiser Field" and the "Lucky Strikes Pool." Any names from corporations manufacturing tobacco and alcohol are automatically eliminated.

Examples of acceptable names are:

- "The Lasker Auditorium donated by the [donor name] family"
- "The [donor name] Library, in honor of [teacher/staff name]"

It is NSF's goal to always retain the original names of the named spaces with the possibility of an additional name of the newly acquired donor making a named gift for that area.

How does the Newton Schools Foundation's Campaign compare to the Campaigns of other public school systems in Massachusetts?

The Newton Schools Foundation's Campaign is the most comprehensive. All the other campaigns offer naming rights but there are no checks and balances in place, as there are in Newton.

Prior to launching a campaign with a naming rights component, NSF needs the approvals of the School Committee, Board of Alderman and the Mayor. In Newton we have a revolving account in which all naming rights monies will be deposited by NSF. Additionally, approvals must be given by the School Committee and a public hearing must be held before accepting all named gifts.

In other communities such as Newburyport, Gloucester, and Brookline, no approvals were needed prior to seeking naming rights. In addition, Newton is the only community that is distributing the funds received from naming rights equitably across all schools.

The only similarity between Newton and other communities is in how we deal with naming rights when an area was already named in honor or in memory of a former teacher, administrator, etc. All communities respected the previous name and added the new name to it. For example, in Gloucester the stadium was previously named "Newell Stadium". After receiving a donation for \$500,000 in conjunction with the naming rights, paid over a period of 10 years, it became "The New Balance Track and Field at Newell Stadium."

Naming Rights in Other Massachusetts Communities

Brookline:

- The Town's only recent naming right for an athletic facility was from a private donor the Kraft family (\$400,000). That donation went through the Town's Park & Recreation Department, and was matched by the NFL (\$200,000).
- The name is "The Kraft Family Athletic Facility at Harry Downes Field."
- The \$600,000 went to make improvements to the facility.

Gloucester (see attached RFP)

- [This article appeared in the Gloucester Times prior to the RFP.](#)
- The Town's only recent naming right for the Stadium went out to bid and New Balance was the highest bidder at \$500,000 over a 10-year period.
- The name is "The New Balance Track & Field at Newell Stadium."
- There is signage at the Stadium's entrance and on the track and field surfaces.
- The \$500,000 went to make improvements to the stadium.

Newburyport:

- The monies raised from naming rights are received by the Newburyport Education Foundation (NEF), which then writes a check for the exact amount to the Newburyport Public Schools.
- They do not invoice the Town for reimbursement of expenses related to naming rights. The NEF covers all expenses from their operating budget.
- They do not have an MOU with the town.
- They have a variety of naming rights, from classrooms at \$5,000 to the auditorium at \$100,000 and several prices in between. For more details, visit the NEF website: <http://www.newburyportef.org/mark.shtml>.
- All fundraising is conducted by the NEF, and none of the naming rights go out to public bid.
- As of 2012, they have given naming rights to about a dozen areas, and all the monies go directly to the Newburyport Public Schools. Naming rights donations include:
 - Newburyport Five Cents Savings Bank (World Language Lab)
 - Class of 1953, Virginia Bilmazes Bernard (Library Circulation Desk)
 - Institution for Savings (Gymnasium)
 - Chester W. Hawrylcw, City Councilor (Photography Lab)
 - Edward G. Molin (Band Room)
 - Class of 1938 (Main Lobby)
 - Class of 1942 (Dean of Students' Office)
 - Edmund & Ruth Burke (Conference Room)
 - NAID Foundation (School Store)
 - Thomas Nicholas Pecorelli, NHS '88, (Video Production Studio)
 - Richard Lamothe (Reading Area)
 - Roger Gagnon (English/Social Studies Faculty Offices)
 - Zampell Companies (Science Classroom)
- John O'Connell (Engineering Technology Lab)
- The School Committee does not have to vote to accept any of the named gifts. They do take gifts from businesses except those associated with tobacco and alcohol.
- A committee chaired by the superintendent of schools allocates the monies to the various schools. The superintendent sits on the board of the Newburyport Education Foundation.
- For more information contact: Marcia Samuelson, staff person at the Newburyport Education Foundation at 978-463-7893 or msamuelson@newburyportef.org.

Worcester:

- Worcester does not have a schools foundation, but naming rights were given for a high school field several years ago.
- For more information, go to <http://www.commercialalert.org/issues/government/city-for-sale/naming-rights-a-big-business>.