

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

WEDNESDAY OCTOBER 12, 2011

7:45pm Room 202

Chairman's Note: All items on the agenda located below item #150-08 are not to be formally discussed and are intended to be voted No Action Necessary.

ITEMS SCHEDULED FOR DISCUSSION:

- #272-11 RICHARD & ANDREE WILSON requesting that His Honor the Mayor and the Board of Aldermen accept a Conservation Restriction on approximately 1.5 acres of their property at 15 Bracebridge Road; the proposed Restriction has been reviewed and approved by the Newton Conservation Commission and the Newton Conservators and will be held by the Newton Conservators. [9/26/11 @2:04PM]
- #64-11 HIS HONOR THE MAYOR, in coordination with the Director of Planning and Development, requesting to amend Section 30-15, Table 4, Dimensional Controls for Rear Lot Development in Residential Zones as they pertain to floor area ratio. [02-22-11 @ 6:47PM]
- #150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM].
- #133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.
- #475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development. [12/09/08 @ 9:41 AM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, contact the Newton ADA Coordinator Trisha Guditz at 617-796-1156 or tguditz@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting.

- #253-10(2) ZONING & PLANNING COMMITTEE supporting the establishment of a Brightfield Solar Energy Array, subject to neighborhood input, on the Flowed Meadow site similar to the one in Brockton. [02-15-2011 @10:01am]
- #288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2 , 3 and 4 districts.
- #440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.
- #20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05-10-11 @3:19 PM]
- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 PM]

Public hearing held on September 26, 2011:

- #26-11(2) PLANNING AND DEVELOPMENT BOARD submitting in accordance with Section 7-2 of the City Charter an amendment to the 2007 Newton Comprehensive Plan to create a new Mixed Use Centers Element to be numbered section 3.A in the Comprehensive Plan and to include a vision and guidance for the development or redevelopment of large mixed-use centers.

Public Hearing to be assigned for October 24, 2011:

- #249-11 FRANK UTANO et al. filing with the City Clerk on August 11, 2011 a Group Petition with 51 qualified voter signatures, pursuant to Sec. 10-2 of the City Charter, requesting a special meeting with the Board of Aldermen to discuss the amended zoning laws scheduled to take effect in October, 2011. [August 18, 2011]

NB: Board action shall be taken not later than three months from the date the petition was filed with the City Clerk. [Nov 9, 2011]

- #49-11 ALD. JOHNSON, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning & Development and Commissioner of Inspectional Services review with the Zoning & Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments. [02-15-2011 @8:44AM]

- #81-11 ALDERMEN JOHNSON, CROSSLEY, HESS-MAHAN, LAPPIN & DANBERG requesting the Director of Planning & Development and the Chair of the Zoning Reform Scoping Group provide updates on the Scoping Group's Progress. These updates will occur at the frequency determined by the Chair of the Scoping Group and the Chair of the Zoning and Planning Committee. [3/14/2011 @ 11:16PM]

- #65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms "flat roof" and "sloped roof" be defined in the zoning ordinance.

- #162-11 ALD. YATES requesting a report from the Director of Planning and Development on the status of the update of the *Open Space and Recreation Plan*, particularly as it pertains to the Charles River Pathway. [05/12/11 @ 10:16AM]

- #65-11(2) TERRENCE P. MORRIS & JOSEPH PORTER proposing amendments to the Zoning Ordinance to revise the definition of "height" in Section 30-1 B) and to add a provision in Section 30- 15(m) to allow accessory structure height limits to be waived by special permit. [03-30-11 @ 4:12PM]
(Public Hearing closed 4-25-2011; 90 day expiration July 22, 2011)

- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for "lot line" and "structure" for clarity. [04-12-11 @11:34AM]

- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of "lot area" and revising the "setback line" definition for clarity. [06/01/10 @ 9:25 PM]

- #365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.

- #150-09(3) ALD. ALBRIGHT, JOHNSON, LINSKY proposing that a parcel of land located in Newtonville identified as Section 24, Block 9, Lot 15, containing approximately 74,536 square feet of land, known as the Austin Street Municipal Parking Lot, currently zoned Public Use, be rezoned to Business 4. (12/10/10 @9:21AM)
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]
- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]
- #152-10 ALD. BAKER, FULLER, SCHNIFFER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]
- #411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners’ current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.
- #391-09 ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

#207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]

#61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]

#164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#48-06 ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

#60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 PM]

Respectfully Submitted,

Marcia Johnson, Chairman



Setti D. Warren
Mayor

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Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

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Candace Havens
Director

September 26, 2011

Ashley F. Walter, Esq.
Shaevel & Krems, LLP
141 Tremont Street, 3rd Floor
Boston, Massachusetts 02111

RE: Conservation Commission certification of Conservation Restriction

Dear Ms. Ashley, Esq.;

Enclosed is the conservation commission certification of the proposed conservation restriction as a public benefit to the City of Newton. I understand time is of the essence in this matter, and am happy to help in any way that I can.

Very truly yours,

For the Commission,

Anne Phelps
Sr. Environmental Planner

Enclosure

CC: Donnalyn Kahn, City Solicitor

Conserva\conservarea\Wilson CR

Conservation Commission
1000 Commonwealth Avenue, Newton, Massachusetts 02459
Email: aphelps@newtonma.gov

MUNICIPAL CERTIFICATION

(We) the undersigned Conservation Commission of City of Newton (the certifier/holder) hereby certify that the proposed conservation restriction is in the public interest in that it (describe public benefit):

The members of the conservation commission agree that the offered conservation restriction provides a public benefit in the form of open space preservation and connectivity for wildlife benefit, particularly as it is adjacent to existing conservation land and the Cochituate and Sudbury Aqueducts, which provide walking trails in some areas.

Date: 9/22/11 Signed: [Signature]

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

NOTES:

This certification by the conservation commission may be submitted separately from the application and filed with the submission of the executed conservation restriction, it being recognized that the applicant may want to submit the application with a draft copy of the conservation restriction for review prior to actual submission of the executed document.

Conservation restriction lands which overlap municipal boundaries must be approved and certified by the appropriate officials of both municipalities.

The commissioners' certification should state why the property is significant and why the conservation restriction is important.

CONSERVATION RESTRICTION

We, Richard D. Wilson and Andree Desiree Wilson, husband and wife, having an address at 15 Bracebridge Road, Newton Centre, MA, 02459, our successors and assigns (“Grantor(s)”), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of Massachusetts General Laws grant with quitclaim covenants to Newton Conservators, Inc., a Massachusetts non-profit corporation c/o Jane Sender, _____, and its successors and permitted assigns (“Grantee”) in perpetuity, and exclusively for conservation purposes, this Conservation Restriction, having the terms and conditions hereinafter set forth with respect to a portion of certain land known as 15 Bracebridge Road and located in the City of Newton, Middlesex County, Massachusetts, hereinafter referred to as the “Conservation Area.” The total land contains approximately 1.979 acres; the “Conservation Area,” which is covered by the Conservation Restriction, will contain approximately 1.649 acres, leaving only .330 acres of unrestricted area for the Grantor’s residence. The Conservation Area is also being shown on a plan entitled “Conservation Restriction Plan 15 Bracebridge Road,” drawn by R.E. Cameron & Associates, Inc., Land Surveyor, Norwood, MA., dated _____, 2011, attached hereto and made a part hereof (See Exhibit A) and also recorded in Middlesex County South Registry of Deeds, Book _____, Page _____.

Purpose

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Conservation area will be maintained in its current condition in perpetuity and for conservation purposes, predominantly in a natural, scenic and undeveloped condition, and to prevent any use or change that would materially impair or interfere with its conservation and preservation values.

These values include the following:

1. Open Space Preservation: The protection of the Conservation Area will enhance the open space value of these lands. The City of Newton has a Recreation and Open Space Plan (hereinafter, “Open Space Plan,”) which expired in 2007. The Committee is presently drafting a new plan, which will be substantially similar to that which preceded it. On September 11, 1986 and on December 8, 1992 in a Confirmatory Deed by the Grantors (Middlesex Registry of Deeds, Book 24038, page 586), 21,590 square feet were given to the City of Newton for conservation purposes. In the original Open Space Plan, this 21,590 square feet is referred to as the Wilson Conservation Land and is highlighted as part of the Open Space Plan. The Wilson Conservation Land is immediately adjacent to this subject Conservation Area and, jointly, the parcels would work to enhance the open space goals and naturally enlarge the present and very modest conservation area already in place, creating a more substantial visual buffer and working in furtherance of Newton’s overall open space goals.

2. Scenic Protection: The Conservation Area, which is immediately adjacent to the Wilson Conservation Area, is a pristine enclave composed of open space, wooded area and a small valley. Restricting use of this area would enhance the natural and scenic features of the area and preserve scenic enjoyment of the general public.
3. Furtherance of Government Policy: This grant will support, by way of example to others, any plans the town has in place to protect open space, recreation, scenic landscape, and water resources by others.
4. Public Access Trails lie near the Conservation Area and would visually benefit from the preservation of the Conservation Area.

This Conservation Restriction is intended to be a charitable donation.

Terms

A. *Prohibited Uses*. Except as to reserved rights set forth in paragraph B below, Grantor will not perform nor allow others to perform the following acts or uses which are prohibited on, above, and below the Conservation Area:

1. Constructing, placing or allowing to remain any temporary or permanent building, structure, tennis court, landing strip, mobile home, swimming pool, golf facility, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, light or utility pole, satellite dish tower, conduit, line or any other temporary or permanent structure or facility on, above or under the Conservation Area; excepting sheds erected for the purpose of maintaining the Conservation Area and the Grantors' home.
2. The permanent, temporary, or illegal dumping of refuse, including the placing, filling, storing or dumping in the Conservation Area of any refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other like substances or materials whatsoever;
3. Mining, excavating, dredging or removing from the Conservation Area soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit;
4. Activities detrimental to scenic views;
5. Any conveyance, lease, easement or other transfer of any part or portion of the Conservation Area without making the transfer subject to this Conservation Restriction in the transfer documents;
6. Any other use of the Conservation Area or activity thereon which is inconsistent with the purposes of this Conservation Restriction and which would materially and significantly impair this Conservation Restriction.

B. *Reserved Rights.* The Grantor reserves the right for himself and his heirs and successors in interest to conduct or permit the following activities and uses on the Conservation Area, but only if such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction:

1. Maintaining and adding to the current trees, landscaping, grass, and plants.
2. Recreational Activities. Use of the Conservation Area for any passive recreational uses that do not materially alter the landscape.
3. Wildlife Habitat Improvement: Management of the Conservation Area for the benefit of wildlife (including without limitation the planting and cultivation of wildlife cover and food crops), and cutting, mowing, pruning, burning, and removal of vegetation to enhance and promote varied types of wildlife habitat consistent with sound wildlife and forestry management practices; and
4. Non-Native or Nuisance Species: The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality.
5. Composting: The stockpiling and composting of stumps, trees and brush limbs and similar biodegradable materials originating on the premises, provided that such stockpiling and composting is in locations where the presence of such activities will not have a deleterious impact on the purposes (including scenic values) of this Conservation Restriction;
6. Utilities: Installation of underground utilities including septic systems so long as the area is restored to its former condition with plantings if necessary.
7. Signs: The erection, maintenance and replacement of signs with respect to hunting, trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Conservation Area, and the protected conservation values; and,
8. Excavation: The excavation and removal from the Conservation Area of soil, gravel or other mineral resource or natural deposit as may be incidental to the installation or maintenance or removal of underground tanks, septic systems, utilities and other underground structures or to the maintenance of good drainage, soil conservation practices or to other permissible use of the Conservation Area.

C. *Notice and Approval.* Any notices sent under this conservation restriction shall be sent to the parties at the addresses listed above. Any party may provide a new *address* by sending a notice containing the new address to the other parties. Whenever notice to or approval by Grantee is required hereunder, Grantor shall notify Grantee in writing not less than sixty days prior to the date Grantor intends to undertake the activity in question. The notice shall describe

the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. The notice shall state that Grantee's failure to respond within sixty days shall constitute constructive approval of the request. Where Grantee's approval is required, Grantee shall grant or withhold its approval in writing within sixty days of receipt of Grantor's written request therefor. Failure of Grantee to respond in writing within such 60 days shall be deemed to constitute approval by such Grantee of the request as submitted. Grantee's approval shall not be unreasonably withheld, but a Grantee may withhold its approval if the proposed activity will materially impair the terms of this Conservation Restriction. Any written notice required or permitted hereunder shall be deemed delivered if sent by certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth at the beginning of this instrument or, with respect to assignees, to the address set forth in a recorded instrument transferring title to the Conservation Area or rights hereunder, or to such other addresses as the parties may designate in writing from time to time.

D. *Release.* If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, conversion or taking by any public authority under power of eminent domain or other act of public authority, shall not be entitled to any portion of any such sale, exchange, conversion or taking; instead said portion shall be remitted to Grantor.

E. *Access.* The Conservation Restriction hereby conveyed does not grant to Grantee, to the public generally, or to any other person any right to enter upon the Conservation Area except that there is hereby granted to Grantee and its representatives the right to enter the Conservation Area at reasonable times, with reasonable notice and in a reasonable manner for the purpose of inspecting the conservation area to determine compliance herewith.

F. *Legal Remedies of Grantee*

1. Grantee may enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Conservation Area to its condition prior to such violation. Grantee's rights under this paragraph F shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee. Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee. No forbearance by the Grantee to exercise its rights under this conservation restriction shall be deemed or construed to be a waiver and no waiver on one occasion shall obligate Grantee to grant an additional waiver. No waiver shall be valid unless it is written and signed by Grantee, except, as to constructive approvals provided for in paragraph C above. If the Grantee needs to resort to legal enforcement of this Conservation Restriction, and prevails in court, the Grantor will indemnify and pay the Grantee its costs and reasonable attorneys fees and expenses incurred as a result of said legal action.

2. Notwithstanding the foregoing, for any dispute or claim arising out of or relating to the terms of the Conservation Restriction which cannot be resolved in good faith directly between the Grantor and Grantee, no action shall be filed or prosecuted in any court until the claim or dispute has first been submitted to a mediator, mutually selected by the parties hereto, for at least five hours of mediation. The cost and fees associated with the mediation services shall be shared equally by all parties. The mediator's determinations shall not be binding upon any party. If the mediation is not concluded within thirty days from the time that a dispute is presented to the grantor or grantees, then the party raising the dispute may file an action despite the failure to complete the mediation.

G. *Acts Beyond Grantor's Control.* Nothing contained in this Conservation Restriction shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Area resulting from causes beyond the Grantor's control, including, but not limited to, fire, flood, storm and earth movement, acts of war whether declared or undeclared, acts of criminals or enemies of the United States, or actions taken in response thereto, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Area resulting from such causes.

H. *Duration and Assignability.* The burdens of this Conservation Restriction shall run with the Conservation Area land and shall be enforceable against Grantor and its successors and assigns in perpetuity. Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction, should any such notices or instruments be deemed necessary. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by Grantee, except in the following instances from time to time: (i) as a condition of any assignment, Grantee requires that the terms of this Conservation Restriction continue to be carried out; and (ii) the assignee, at the time of assignment, qualifies under section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly. Upon dissolution of the Grantee or its assigns, the Grantee or its assigns may assign its rights to any other non-profit organization which has as one of its principal purposes the advancement of the interests protected by this instrument. However, if the Grantee or its assigns should fail to assign its rights then by default this Conservation Restriction will go to the Newton Conservation Commission, if they choose to accept it. If the Newton Conservation Commission should fail to accept this restriction, then any citizen of Newton may petition the Superior Court to appoint an appropriate non-profit group to hold this Conservation Restriction. Such new holder will have rights of assignment as stated hereinbefore.

I. *Subsequent Transfers.* In the event of any conveyance or transfer approved under paragraph A.5, Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument by which Grantor conveys any interest in all or a portion of the Conservation Area including, without limitation, a leasehold interest. Grantor

further agrees to give written notice to Grantee of the transfer of any interest at least forty-five (45) days prior to the date of such transfer. Failure of Grantor to do so shall not impair the validity of such transfer or of this Conservation Restriction, and shall not limit the enforceability of this Conservation Restriction in any way.

J. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, and subject to the provisions of paragraph A.6, the rights and obligations under this Conservation Restriction of any party holding any interest in the Conservation Area shall terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to transfer, and liability for the transfer itself, if the transfer is in violation of this Conservation Restriction, shall survive the transfer.

K. Estoppel Certificates. Upon request by Grantor, Grantee shall, within fifteen (15) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by Grantor.

L. Representations of the Grantee. Grantee represents that it is a private, charitable, non-profit conservation land trust or corporation, that it is a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, that it is organized and operated for the purpose of serving and conserving natural resources, natural habitats and environmentally sensitive areas and for other charitable, scientific and educational purposes, and that it has both the necessary funds and the commitment to hold this Conservation Restriction exclusively for conservation purposes in perpetuity and to enforce its terms.

M. Miscellaneous:

1. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts
2. Severability. If any provision of this Conservation Restriction shall, to any extent, be held invalid, the remainder shall not be affected.
3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.
4. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

5. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder shall take effect when all requisite signatures pursuant to section 32 of chapter 184 of the General Laws have been obtained and this document has been recorded in the Middlesex South Registry of Deeds.

6. No Pre-Existing Public Right. Approval of this Conservation Restriction pursuant to M.G.L. ch. 184, Section 32, by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Conservation Area.

WITNESS my hand and seal this _____ day of ____, 2011.

RICHARD D. WILSON

ANDREE DESIREE WILSON

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

_____, 2011

Then personally appeared the above named Richard and Andree Desiree Wilson, who proved to me through satisfactory evidence of identification, which was

_____ to be the person whose name is signed on the preceding or attached document and acknowledged to me that s/he signed it voluntarily for its stated purpose. _____

Notary Public

My commission expires: _____

ACCEPTANCE OF GRANT

The above Conservation Restriction was accepted by _____, this ____ day of _____, 2011.

By: Newton Conservators, Inc.

By: _____

Title: _____

Its: _____, duly authorized

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss _____, 2011

Then personally appeared the above named _____, who proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding or attached document and acknowledged to me that s/he signed it voluntarily for its stated purpose. _____

Notary Public

My commission expires: _____

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Newton Conservators has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2011

Richard K. Sullivan, Jr.
Secretary of Energy and Environmental Affairs

EXHIBIT A

(PLAN)

DRAFT

NEWTON CONSERVATORS, Inc.
Minutes of the Board Meeting
September 14, 2011 7:30 PM
Newton City Hall Room 202

Attending: Jane Sender (presiding), AnnaMaria Abernathy, Margaret Albright, Octo Barnett, Dan Brody, Bonnie Carter, Mike Clarke, Margaret Doris, Robert Fizek, Bill Hagar, Katherine Howard, Ted Kuklinski, George Mansfield, Eric Reenstierna, Larry Smith, Beth Wilkinson.

Also present was Advisor Duane Hillis, Sally Barnett, and for the first item, Ashley Walter, Esq., of Shaevel & Krems.

Approval of the Minutes of July 13, 2011: The minutes were approved as written.

Wilson Conservation Restriction: Ashley Walter described and explained the draft conservation restriction on all but .3 acre of the Wilsons' 2 acre property at 15 Bracebridge Road. The Land Acquisition Committee had met earlier in the evening and voted to approve the CR. Following discussion of access, monitoring details and cost, a MOTION to approve the CR, with some questions still to be resolved, was SECONDED and unanimously approved.

Mike Clarke agreed to attend the Sep. 22 Conservation Commission meeting when the CR would be discussed and voted on.

Treasurer's Report: Katherine explained the financials through June 30, which she had emailed to the board days earlier. Revenues are 3% below budget, which is usually corrected in the last quarter. Expenses were as expected; special projects are running positive so far; the annual meeting exceeded expectations, netting \$7000. \$600 for grants remains available. The IRS filings were done in August, and all filings are up to date.

Mass Audubon Reports: (Jane) Monitoring at all of the properties will resume in April/May 2012.

Follow-up on other properties and reporting schedule:

October: Ordway Park and Crystal Lake issues, Beth. November: Newton Community Farm, Bill Hagar. December: Dolan Pond, Ted. January: Wilmerding, Mike. February: Prospect Park, George. March: Autrey Dell, Eric. April: Golf Course, Jane. The follow up water testing results on the golf course were distributed to the board and all results are within EPA guidelines.

Open Space Advisory Committee; board priorities: Ted, Mike, and Jane are participating on the advisory panel, for which the board needs to indicate its priorities. Pages 88-91 of the 2003 Open Space Plan were reviewed, and grades assigned (attached – see grades in margins).

Other sites suggested for consideration were

- Verizon Lot at 91 Court Street, Newtonville : pocket park
- Cheese Cake Brook pathway
- Two Stratford Road parcels adjacent to Dolan Pond
- Goldman Property CR (n. side of trail from Elgin St.)
- CRs on all the City's parks
- Avery Woods CR
- Corner of Sterling & Seward Sts. – a house has been torn down.

The following undertook to investigate questions:

- Margaret Albright will ask Harry Sanders regarding Franciscan/Mt. Alvernia
- George – re Andover-Newton CR
- Ted – Farwell St. – second property

The Open Space Planning Committee's next meeting will be on October 5.

Nahanton Park Report: (Jane) The Audubon draft review indicates that having the farm expand as desired would change the nature of the park. Duane recommended that the treed area that was formerly farmed should be cleared and used.

Chestnut Hill Shopping Center: (Jane) the recommendation that the parking area be reduced has been rejected.

Charles River Invasives: Charles River Invasives: Larry reported on this summer's weed pulling of water chestnuts. This year a DCR Matching Grant allowed the State to hire Aquatic Control Technology to perform hand pulling, assist volunteer efforts and conduct before and after surveys. These surveys will support NOI applications for next year. For the future, private funding in cooperation with CRWA may be a more effective use of limited funds.

Fall Walks: Alison has scheduled the walks, which will be on the web site before the Newsletter arrives.

Annual Meeting Date: Jane suggested we meet before the crowded end of May-June calendar. It was agreed that we reserve the upstairs room at Post 440 for May 2, if available. [*Katherine reserved the room on the following day.*]

New Business:

Poison Ivy at Saw Mil Brook. Dan noted that the path is blocked by poison ivy. Jane said the Conservation Commission is working on a policy to permit removing of poison ivy from trails.

Adjournment: at 9:20 PM

Respectfully submitted,
AnnaMaria Abernathy, secretary

The Conservation Action Program addresses:

- (1) A clearly delineated governmental policy to further and protect the public's interest in the supply and location of land and water resources in Newton. Such resources may be acquired for public ownership, or as hereinafter listed in this Plan may remain in private ownership and management, but have their public benefits assured in perpetuity by the recording of Conservation Restrictions on such land and water resources pursuant to the provisions of Chapter 184, Sections 31-33 of the Massachusetts General Laws, the Conservation Restriction Act;
- (2) Improvements to enhance land and water resources; and
- (3) Management and maintenance of land and water resources.

ACTION PROGRAM

CONSERVATION OF LAND AND WATER RESOURCES						
	MAP CODE INDEX NO.	FISCAL YEAR				
		03	04	05	06	07
Acquisition by City of Newton by gift or purchase:						
A Done - Acquisition of West Kessler Woods ("Edison Land" - now owned by N-Star) 9.20 acres bordering on Saw Mill Brook if funds become available, or by negotiation of a Conservation Restriction	58	X	X			
A- 1 Of 3 Acquire three remaining lots on Wabasso Street and Forest Grove abutting the Charles River access and pathway when offered for sale	Near 219	X	X	X	X	X
Acquisition by City of Newton by gift, purchase or negotiation of a Conservation Restriction in perpetuity on the following whole or less-than-whole parcels:						
A No 122 Islington Road - CR to protect steep, wooded, gravel aquifer bordering on Charles River	210	X	X			
A (need to check) Missionary of Franciscan Sisters / Mt. Alvernia High School Property - CR on wooded portion bordering on Edmands Brook	82		X	X		
? (DCR?) Temple Mishkan Tefila Woods - CR on whole parcel	83		X	X		
A- ? Boston College Law School - Newton Campus - CR to protect small, but rare in Newton, Cambridge Slate outcrop south of Colby Road	80			X	X	

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Margaret Allright

M. Doris will investigate

?	Hammond Pond - CR to assure permanent public access to Pond across commercially-zoned, privately-owned, parking lot abutting Hammond Pond MDC Reservation. (Temporary access assured by July 17, 1979 Memorandum of Agreement has expired)	Adj to 178	X	X				
	Hammond Pond - CR on vegetated edge of the commercially zoned, south side of the Pond	Adj to 178		X	X			
	Hammond Pond - CR on privately owned residential wooded swamp and uplands on east side of Pond off Longwood Road Section 63, Block 37, Lot 13		X					
	Hammond Pond same area Section 63, Block 37, Lot 14		X					
	Hammond Pond same area Section 63, Block 37, Lot 17		X					
A	?85 Dudley Road - CR on western portion of Horst estate abutting Newton South High School property to protect Brighton Volcanic rock formations	50		X	X			
	Done Andover-Newton Theological Seminary/The Terraces Development on Institution Hill - CR to assure easement for unobstructed view south to Blue Hills	84	X					
A-	No 600 Beacon Street - CR to protect cliff with geological interest					X		
?	No Oak Hill Park Trustees' Woods - CR to protect tree cover, bordering on Charles River floodplain	90		X	X			
?	No Marriott Hotel - CR to protect peninsula at north end abutting Charles River.	62	X					
	Done 76 Webster Park - CR on top of hill overlooking Dolan Pond Conservation Area	3	X	X				

George Mansfield

(Need to Check) Acquisition by Metropolitan District Commission by gift, by purchase, or by other negotiation of the following Charles River Pathway Easements or ownership (many of these properties are also listed for possible city easements):						
A	Marcy Land – American Tower Systems portion bordering the Charles River – 0.34 acre	36	X	X		
A	56 Farwell Street – bordering on Charles River 2.8 acres for scenic easement or conservation easement without public access <i>Add 2nd property</i>	6	X	X		
	Lasell College Boathouse - land owned by MDC – verify and ensure access rights	231		X		
A	Charles River Country Club access or conservation easement	75		X	X	
Conservation Facility Improvement and/or Development:						
A	<u>Ongoing</u> Continue construction of Charles River Pedestrian Pathway including Williams Street improvements and marsh crossings at Nahanton St. and Wells Ave. in cooperation with MDC	38	X	X	X	X
	<u>Ongoing</u> Implement a passive recreation strategy for appropriate use of Flowed Meadow, an action recommended by the Flowed Meadow Planning Group <i>(Group may be gone)</i>	1, 1A, 91	X			
	<u>Done</u> Development of parking, boardwalks, and access for people with disabilities at Dolan Pond Conservation Area	3	X			
Management:						
	<u>No</u> Identify and map major upland vegetation types on the City's aerial photographic atlas		X	X	X	X
	<u>No</u> Continue the development of a series of field guides, tree guides, and nature guides for use in the City's Conservation Areas		X	X	X	X
	<u>No</u> Support the State Department of Environmental Management P. L. 92-500 Section 314 Program for Lake Management and encourage inclusion of Hammond Pond in the Program		X	X	X	X

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