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Community Preservation Committee

MINUTES

12 November 2019

The meeting was held on Tuesday, 12 November 2019 starting at 7:00 pm in the City Hall Room 204.

Community Preservation Committee (CPC below) members present: chair Mark Armstrong, vice chair Dan Brody, and members Byron Dunker, Rick Kronish, Susan Lunin, Robert Maloney, Jennifer Molinsky and Peter Sargent. One CPC position was vacant, as the Mayor's new appointment for historic resources was pending.

Community Preservation Program Manager Alice Ingerson served as recorder.

[Blue, underlined phrases](#) below are links to additional information online.

Elected officials attending: City Councilor Lisle Baker (last portion of the meeting).

City staff attending: Chief Operating Officer Jonathan Yeo, Planning & Development Director Barney Heath, Chief Environmental Planner Jennifer Steel, consulting attorney and former acting City Solicitor Ouida Young, Assistant City Solicitor Maura E. O'Keefe.

Proposals & Projects

CPC working session on [300 Hammond Pond Parkway](#) ("Webster Woods") (open space acquisition & preservation, Newton Centre/Chestnut Hill) – \$15,740,000 in CPA funding requested by Mayor Ruthanne Fuller

After introducing Ouida Young and Maura O'Keefe, Mark Armstrong asked them to provide the CPC with brief guidance on any topics that should only be discussed in an executive session.

Young believed that the only reason for the committee to discuss the 300 Hammond Pond Parkway proposal in executive session would be if it wished to review the methodology or details of the full appraisal on which the funding request was based.

Maura O'Keefe said there was a statutory requirement that the CPC discuss how to respond to the open meetings law complaints pending against it, and that this discussion could be held in executive session if doing so in public session would negatively impact the committee's litigating position, including if the committee wished to discuss the required written response that she would submit on their behalf to the Attorney General's office. She noted that although a court had denied a request for a preliminary injunction under open meetings law to prevent tonight's meeting and vote, that did not end the case. The CPC could go into executive session to learn about and plan for this case, if doing so in public session would negatively impact the committee's strategy.

The committee began by reviewing the comments heard in the public hearing on November 6.

Rick Kronish was impressed by a number of the comments. First, he had not been aware that the Congregation Mishkan Tefila had originally sought to sell the land to the City. Once the City had declined that opportunity, Boston College's purchase seemed reasonable. He had been impressed by the [maps showing strong support in the neighborhood](#), but he felt people who live farther away in Newton should be aware of this effort. He had also heard concerns about the location of affordable housing projects mostly on the north side of the city, with open space projects more often on the south side. He thought it was important that all members of the

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*Minutes
continue on
next page.*

community be allowed to weigh in. He had appreciated hearing from the two Boston College students who supported preservation of the woods but would like to know how broadly the student body shared their views.

Bob Maloney had been impressed with several of the comments and people who spoke. He would still like to satisfy himself that voting to approve this large expenditure will not hamstring the committee's ability to fund other things in other locations in the future, including open space. Open space cannot necessarily be spread around the city equitably. In response to Armstrong, Maloney said he would also like to discuss debt financing as the proposed funding method.

Jen Molinsky had heard many compelling reasons for preserving the woods, concerns about using eminent domain, and a need for Newton residents to understand more clearly how new proposals can be brought to the CPC. She considered the use of eminent domain unfortunate but felt it was beyond the CPC's control. She had not heard anything from Boston College about their willingness to protect the woods on their own. With Maloney, she wanted to revisit the impact of the project's potential yearly debt service on the availability of funds for other projects.

Peter Sargent said he came to the committee from an affordable housing perspective and, although housing proposals have been very prominent over the past few years and will be prominent in the future, open space was one of the four resources CPA funds could support. Open space acquisition opportunities were few and far between. Thomas Keady of Boston College had cited many important facts about the relationship between the College and Newton, but his remarks did not really lead to a conclusion. Since this project would rely on CPA funds, it would not have an impact on regular Newton property taxes or on projects funded through those regular taxes. For this project, the committee needed to find the right balance between using current cash and using long-term debt. He urged the CPC to focus on the decision it was being asked to make today, rather than speculating about decisions that might have to be made by future CPC members.

As the Conservation Commission's representative on the CPC, Susan Lunin saw limited opportunities to acquire open space. The proposal for 300 Hammond Pond Parkway was opportune and a good thing. She couldn't imagine similar opportunities for other large tracts of open space coming up soon, but if they did, the CPC's recommendation of funding for this proposal could also set a precedent by demonstrating Newton's interest in and willingness to use CPA funds to preserve land. That precedent might help the City leverage more open space preservation as it responded to new development proposals.

Buzz Dunker knew that the people who come to public hearings and meetings were mostly in favor of the proposal. However, he felt people around the City were generally not aware of the CPA program and how the funding works, including the speakers at the hearing who were concerned about playing fields. He saw Webster Woods as an asset for the whole City, but there was limited parking on the abutting, small dead-end streets on the Newton Centre side, and no parking on Hammond Pond Parkway. How would most people access the site? The City's use of CPA funds to acquire the Waban Hill Reservoir off Commonwealth Avenue raised the same issue – neighborhoods that support public funding for nearby open space must be willing to accommodate visitors from other neighborhoods. The accessibility issue could sway his decision. Armstrong noted that the proposal as submitted did not address accessibility, but a future, related proposal might do so.

Dan Brody felt the CPC ought to make clear to the public its assumptions about the long-term impact of debt service for this project on the availability of funding for other, future projects. He also noted that 300 Hammond Pond Parkway had originally been donated to the state in 1916 as conservation land. He felt the City had a responsibility and opportunity to honor the wishes of the donor, Edwin Webster, by restoring the undeveloped portion of the site to public use. In addition, Temple Mishkan Tefila's 1954 purchase from the state had included more land than the temple needed because electrical service for their new building was not available from Hammond Pond Parkway. The extra land, used only for a road and electrical lines from Elgin Street, left most of the temple's land undeveloped, and that portion had always been used by the public.

Ingerson explained that Brody had proposed presenting to the committee his analysis of the likely impact of this project on the future availability of CPA funds for other projects.

Kronish preferred that the committee not rely on graphs provided by Brody, whose strong advocacy for the proposal was well known, as the public might assume incorrectly that these financial projections had been vetted independently. Armstrong, Sargent, and Molinsky thought the committee could evaluate the basic trends in Brody's analysis without endorsing his specific assumptions. Ingerson suggested that the committee as a whole should also decide whether to attach Brody's analysis to any funding recommendation it forwarded to the City Council.

Brody then presented the graphs and assumptions attached to these minutes. Both graphs showed slowly declining annual debt service and slowly increasing CPA revenue. Both assumed a minimum 2.5% annual increase in local CPA surcharge revenue, reflecting the maximum rate of increase allowed by Proposition 2 ½ in Newton's underlying total real estate tax levy, plus some additional increase in surcharge revenue due to "new development," which is exempted from the limit in Proposition 2 ½. The "pessimistic" graph assumed an interest rate on debt of 2.6%, an annual 1.1% increase in local CPA revenue due to new development, and an annual decline in state CPA revenue of 0.75%. The "optimistic" graph assumed an interest rate of 1.8%, an annual 1.5% increase in local revenue due to new development, and an annual decline in state CPA revenue of 0.25%. Brody acknowledged that interest rates for the proposed debt would only be known once bonds were actually sold, but the current average for AAA communities, including the City of Newton, was 1.9%. He acknowledged that revenue was also difficult to predict, including both the state matching percentage and local CPA surcharge. Overall, his scenarios suggested that Webster Woods debt service might start by absorbing 16-18% of Newton's annual new CPA funds but end by using about 4-5% of those funds, with a 30-year average of 7-9%.

Molinsky asked the members of the Committee who worked in real estate and finance to comment on Brody's assumptions.

Sargent felt Brody's range of assumptions seemed reasonable. Alternative, equally reasonable assumptions might modify the outcome slightly but not radically. Common wisdom did not expect current relatively flat interest rates to fluctuate much over the next few months. This might be a reason for the Committee to consider using more long-term debt rather than more currently available cash for the Webster Woods funding. In response to Ingerson, Newton COO Jonathan Yeo said the City anticipated selling any bonds authorized for Webster Woods within about 3 months. Dunker noted that bonds sold within that time frame would lock in current interest rates for the next 30 years. Maloney was also satisfied that the range of assumptions Brody had presented made sense.

Molinsky asked about the most unfavorable interest rate the City had paid on recent 30-year bonds. Brody said the City had paid a 2.8% interest on some recent bonds, but interest rates had since fallen. Sargent thought 3% interest would be the worst scenario anyone would present, but 2% was more likely. He noted that concerns in February 2019 about interest rate increases had then been followed by interest rate decreases. Kronish reminded the committee that interest rates had dropped in 2008, but he felt such a scenario would be very hard to predict and was currently very unlikely. Molinsky thought that in the short term, unpredictable federal policy decisions posed the greatest risk of unpredictable changes in interest rates.

Ingerson agreed with Brody that projecting CPA revenue over 30 years was very difficult. [The City's official financial forecast](#) predicts real estate tax revenue only for the next 5 years. [The CPC's online CPA revenue forecast](#) limits itself to the next 5-10 years. Although Newton would surely see some new development over the next 30 years, she thought new development might be very uneven over that time period. Sargent suggested that a future downturn in real estate development was much more likely at some point than a continuation of the same growth rates as the last 10 years.

Ingerson emphasized that state CPA revenue was particularly difficult to forecast, one reason the CPA state statute does not allow communities to borrow against their state matching funds. Both of Brody's scenarios assumed a slower rate of decline in the state match than was assumed in the CPC's online, 10-year forecast. However, simply extending the online forecast's assumptions to 30 years would result in an eventual 0% state match, which was technically impossible. She also noted that, although it had taken the state legislature

almost 20 years to approve the first increase in the Registry of Deeds fees that provide state CPA funds, the next increase might be approved more quickly, as more and more Massachusetts communities adopt the CPA. [Staff note: As of late November 2019, 237 out of Massachusetts' 351 municipalities have adopted the CPA.]

Overall, though any 30-year assumptions about CPA revenue were necessarily debatable, Ingerson felt projecting artificially "smooth," average rates of change, as Brody had done, made more sense than trying to predict the timing of actual downturns or increases.

Kronish reiterated his concern about how Brody's presentation should fit into any CPC recommendation to the City Council. Brody proposed to attach his analysis to the recommendation. Sargent advised against this. After a brief discussion, the committee as a whole agreed by sense of the meeting not to attach the analysis to any recommendation. In response to interest later expressed by Councilor Baker, however, Ingerson noted that Brody's presentation would be attached to these minutes.

Maloney and Dunker reiterated their concerns about the site's accessibility for people who lived beyond walking distance. Armstrong recognized Jennifer Steel, the City's Chief Environmental Planner, who said the City was working with the state Dept. of Conservation and Recreation on access improvements along Hammond Pond Parkway as part of the Parkway's overall redesign, including adding safe pedestrian crossings and safe parking areas along the Parkway itself. New signage, expanded parking and a pedestrian trailhead from the access road to the Towers of Chestnut Hill apartment complex were also under discussion. Steel said construction of improvements along the Parkway between Beacon Street and Route 9 might begin in the 2020 construction season.

Lunin, Sargent and Dunker shared Maloney's concerns about public access. Lunin felt Steel's response had addressed her questions. Dunker trusted that the City would address this concern. Armstrong felt that improved access would be provided as it was demanded over time. Maloney thought the worst that could happen would be for the CPC to recommend the requested funds and find that the site continued to have only its current, minimal access. Sargent agreed that access was a legitimate concern, but he felt the alternate risk of losing the woods was greater. Maloney agreed.

Maloney felt the tight timeframe requested for CPC consideration of this proposal had made it difficult for the committee to request revisions in the proposal. Ingerson agreed that the CPC could ordinarily use its discussion of a pre-proposal to condition its consideration of a project's full proposal on revisions, such as incorporating into this proposal a plan for broadening public access. In this case, however, the CPC had agreed at the City's request to expedite consideration of the proposal by waiving the pre-proposal requirement.

In response to Kronish, Ingerson reminded the committee that they could not condition their recommendation for the requested funds on future access improvements because these funds would be appropriated directly to City departments. In contrast, the grant agreements governing the release of CPA funds to non-City grantees often include specific conditions, which are enforced by the City's Law Dept.

Motions & Votes

1. land purchase and debt financing

The CPC joins with the Conservation Commission in recommending that the City of Newton take in fee, by eminent domain, for open space purposes the approximately 17.4 acres of undeveloped woodlands located at 300 Hamond Pond Parkway as shown on the plan, entitled "Taking Exhibit," dated 7 October 2019 and attached as page 4 of this recommendation.

The CPC further recommends that for pro tanto compensation for this eminent domain taking, the City Council authorize the treasurer to borrow \$15,000,000, issuing any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44B, Sect. 11, or any other general or special law, for a period of 30 years. As required by Chapter 44B, Sect. 11, all proceeds from general obligation bonds or notes issued under this authorization shall be deposited in the Community Preservation Fund.

The Community Preservation Committee further recommends that any premium received upon the sale of such bonds or notes, less any such premium applied to the payment of issuance costs of the bonds or notes, shall be deposited in the Community Preservation Fund's restricted fund balance for open space.

VOTE Brody moved the motion as stated above. The motion was seconded by Lunin and was adopted by a vote of 7 in favor, 1 opposed (Maloney), who did not feel comfortable supporting this funding without a clear plan in the proposal to improve access for the general public.

2. grant to Newton Conservators

The CPC recommends that, for a grant to the Newton Conservators, Inc., to hold the conservation restriction required by General Laws Chapter 44B, Sect. 12 on the land to be taken by the City of Newton by eminent domain at 300 Hammond Pond Parkway, \$15,000 be appropriated to the control of the Planning & Development Dept. from the Community Preservation Fund's Fiscal 2020 Open Space Reserve.

VOTE Sargent moved the motion as stated above. The motion was seconded by Armstrong and was adopted by a vote of 7 in favor, 1 abstaining (Brody). Brody abstained because of his membership on the Newton Conservators Board of Directors.

3. legal and other costs

The CPC recommends that, for legal services and other costs required for the eminent domain taking of 17.4 acres of undeveloped woodlands located at 300 Hammond Pond Parkway, including for any associated litigation, \$725,000 be appropriated to the control of the Law Dept. from the Community Preservation Fund's Fiscal 2020 Open Space Reserve and restricted fund balance for open space.

VOTE Lunin moved the motion as stated above. The motion was seconded by Sargent and was adopted by a vote of 8-0.

Ingerson briefly reviewed the CPC's standard format and procedure for funding recommendations: After each CPC funding vote, she drafts the text of the recommendation in the committee's standard format, then circulates it to all CPC members for confirmation that the written recommendation correctly represents their public discussion and vote. After receiving that confirmation, she forwards the final recommendation to the City Council and the Mayor.

To help this process move more efficiently in this case, Ingerson asked the CPC to review briefly what should be included in each section of the recommendation, particularly under "Special Issues Considered." Through brief discussion, the CPC agreed that this section should highlight the following issues from its deliberations: the use of eminent domain as the land acquisition method; the analysis that led to the CPC's recommendation to rely on 30-year debt for acquisition costs, particularly as a way to ensure that the funds would remain available for other CPA-eligible projects, in all categories; the need for broader public access, particularly parking on both the Hammond Pond Parkway and Newton Centre sides of the site, as the reason for Maloney's vote in opposition to the first motion, but as a concern widely shared by other CPC members; and the need for additional public outreach and education about the CPA and Newton's CPA funding process and resources.

Ingerson also summarized the intended schedule for this review and docketing process: She would docket each recommendation with the Council by November 14; aim to circulate the draft text of the funding recommendation by November 15; and ask all CPC members to confirm their approval of that draft by November 19; intending to forward the final recommendation and attachments to the City Council in time for its review of the recommendation to begin on Monday November 25.

Councilor Baker urged the Committee not to mention the short time given to the CPC to avoid giving the impression that the CPC did not have time to consider its recommendation carefully. Lunin believes the Committee did make its decision thoughtfully. Main concern (Molinsky, Maloney, Sargent, Dunker) that they set aside their concern about improving public access to vote in favor of the acquisition.

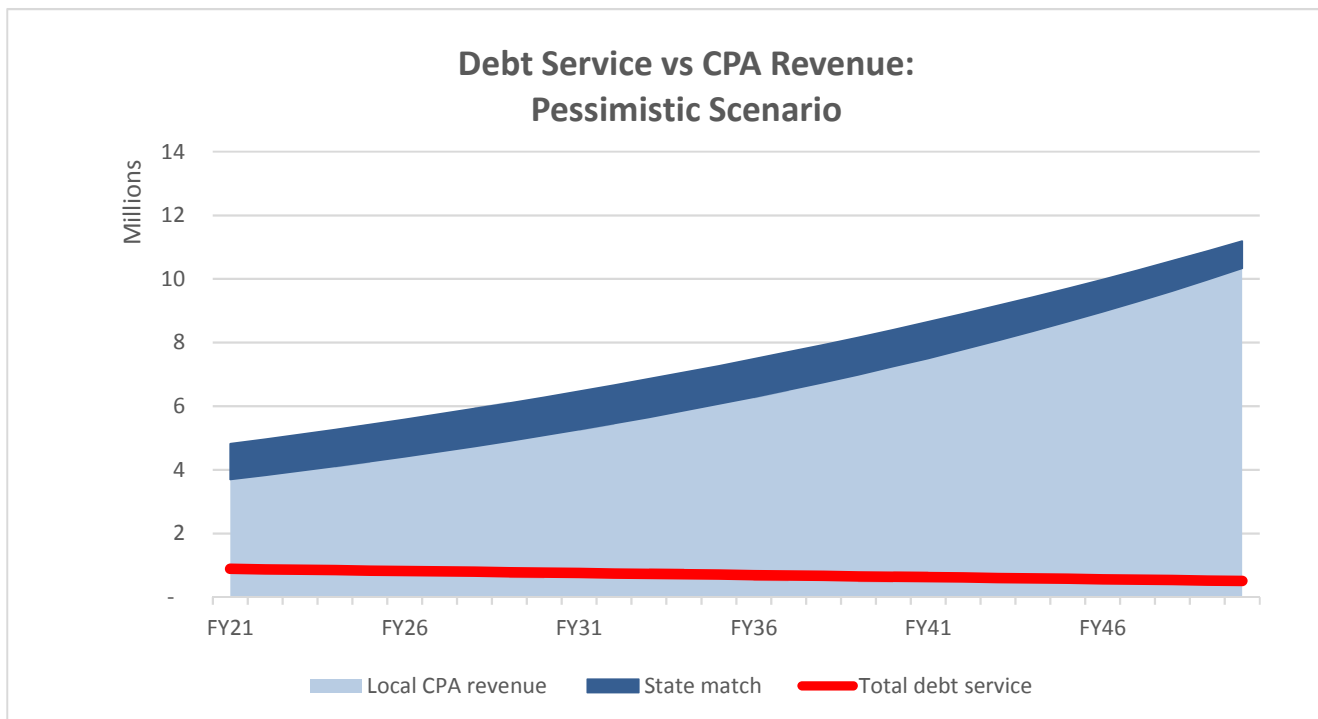
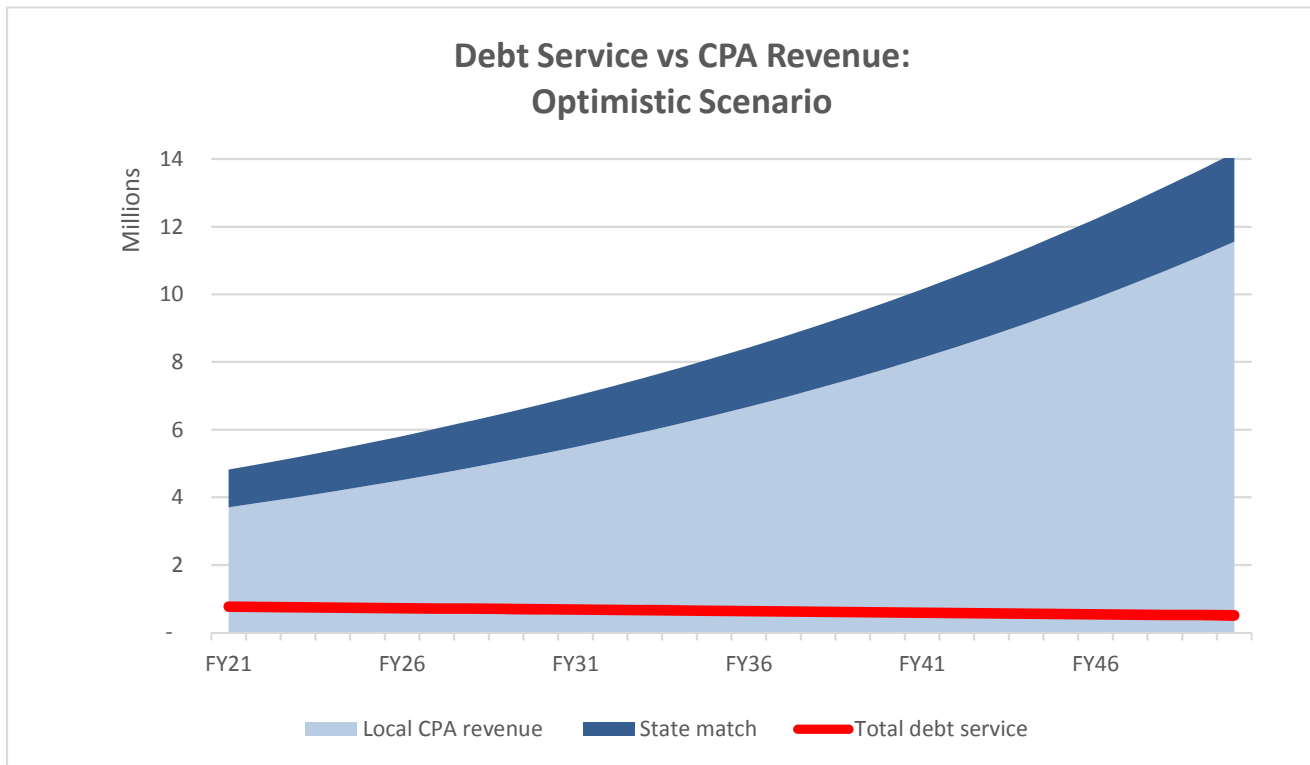
EXECUTIVE SESSION

At approximately 8:35 pm, Armstrong declared that conducting the next portion of the discussion in open meeting might have a detrimental effect on litigation strategy with regard to a pending Superior Court action filed by Boston College and a complaint also filed by Boston College with the Division of Open Government against the Community Preservation Committee. He called for a roll call vote for an executive session as the last item of business at tonight's meeting, without a return to public session.

ROLL CALL VOTE to begin executive session without returning to open session	Yes	No
Armstrong	1	
Brody	1	
Dunker	1	
Kronish	1	
Lunin	1	
Maloney	1	
Molinsky	1	
Sargent	1	
TOTALS	8	0

At this point the public was asked to leave the meeting.

Webster Woods Debt Service Compared to CPA Revenue



Webster Woods Debt Service Compared to CPA Revenue

Assumptions used in scenario analyses	Optimistic	Pessimistic
Average bond interest rate <i>Actual average rate for AAA bonds as of 11/07/2019 = 1.9%</i>	1.8%	2.6%
Annual change in state matching percentage <i>State matching percentage in year 30</i>	-0.25% 23%	-0.75% 8%
Annual increase in property tax revenue from new growth * <i>Average during past 6 years = 1.7%</i> <i>Average during past 30 years = 1.3%</i> <i>Average assumed in FY21-25 city financial forecast = 1.3%</i>	1.5%	1.1%

* **CPC staff note:** In addition to revenue due to new growth, both scenarios above assume annual growth of 2.5% in the local CPA surcharge based on assuming that same annual growth in Newton's total real estate tax levy, as allowed by by Massachusetts Proposition 2 1/2,

Results of scenario analysis	Optimistic	Pessimistic
FY21 debt service as % of total CPA revenue	16%	18%
FY50 debt service as % of total CPA revenue	4%	5%
FY21 through FY50 debt service as % of total CPA revenue	7%	9%
Total debt service cost FY21 through FY50	19,185,000	21,045,000

Prepared by Dan Brody, Community Preservation Committee