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Barney S. Heath  
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**Community Preservation Committee**

MINUTES

16 November 2017

The meeting was held on Thursday, 16 November 2017 starting at 7:00 pm in Newton City Hall Room 204.

Community Preservation Committee (CPC below) members present: chair Jonathan Yeo, vice chair Peter Sargent, members Mark Armstrong, Dan Brody, Richard Kronish, and Jim Robertson. Members Beryl Gilfix and Susan Lunin were absent. The Parks & Recreation Commission's appointment is currently vacant.

Community Preservation Program Manager Alice Ingerson served as recorder.

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

**Staff Overview of Program Finances**

Alice Ingerson explained that the day before the meeting, the state Department of Revenue had announced the distribution of funds from the state Community Preservation Trust Fund to all CPA communities. As a 1% surcharge community, Newton will receive a 17.2% state match for its certified Fy17 local surcharge revenue, or \$531,924. Based on the Department of Revenue's requirements available in spring 2017, Newton budgeted a 10% match, or \$291,500. So \$240,424 of state funds received in Fy18 will be budgeted and available for appropriation only in Fy19.

**PROPOSALS & PROJECTS**

**PUBLIC HEARING** & possible CPC funding recommendation vote:

[Newton Cemetery, Whipple-Beal Cast Iron Fence](#) (Newton Centre): \$60,000 funding request

[This full presentation is online from the CPC's webpage for this project.](#)

Cemetery President Mary Ann Buras presented a summary of the proposal. The Newton Cemetery is an important community feature and resource. Its founders and monuments represent many of Newton's prominent citizens, after whom streets and schools have also been named. . The Massachusetts Historical Commission has confirmed the eligibility of the Cemetery as a whole for listing on the National Register of Historic Places. Buras described many of the Cemetery's current activities and services, including growing flowers for the Newton Pride program, maintaining and repairing the City sidewalks near the Cemetery's entrances, and walking tours focused on community history, bird watching, and trees. The cemetery is the only accredited arboretum in Newton and is Newton's highest-rated attraction on TripAdvisor®.

Buras explained that the Whipple-Beal lot is often featured on history walks, as it contains the cemetery's first burial (1856), Jesse Annie Whipple, and her two brothers, all of whom died in infancy. The lot's surrounding fence, with its weeping willows and reclining lambs, illustrates sentimental attitudes toward death in the Victorian era and is the last remaining such fence in Newton Cemetery. The Newton Historical Commission has confirmed the fence's significance in local history and culture.

website [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa)

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The Cemetery's plan to restore this fence was developed with the assistance of a conservator recommended by Mount Auburn Cemetery. Newton Cemetery has received a donated 3-d laser scan of the fence. The restoration, repair and as needed reconstruction of the fence will be done mostly indoors, over 10-14 weeks. The original fence and the restoration process will both be meticulously documented in a final report.

The Cemetery is requesting \$60,000 in CPA funds for the restoration itself. The Cemetery will donate staff time for project management and some on-site work. Funds raised by the Friends of Newton Cemetery will cover the cost of interpretive signage. In a letter received just before the hearing, Whipple-Beal descendant Eliot Beal of Scituate, Massachusetts, confirmed his commitment as reported in the proposal to donate 10% of the project's total \$74,500 cost.

#### CPC QUESTIONS

In response to Dan Brody, Buras explained that the Cemetery's maintenance plan to prevent future deterioration of the restored fence includes annual inspections and paint touch-ups, light sanding and repainting approximately every 20 years, and complete stripping and repainting every 30-35 years.

Peter Sargent and Jim Robertson both felt that the letter of support and financial commitment from Eliot Beal were the most significant additions to the proposal.

Rick Kronish and Mark Armstrong were happy to support the proposal. Kronish cremated his wife at Newton Cemetery and finds comfort there. Robertson agreed that the Cemetery was a beautiful community asset.

In response to Jonathan Yeo, Armstrong summarized some of the project's quality-control challenges. It will be important not to see brand-new brackets, screws, etc. on the restored fence, and 3-dimensional laser scans must be used thoughtfully, so the final product does not reproduce every current blemish but also does not look too new and perfect. Robertson was confident that this project would strike the right balance.

Robertson had supported the use of CPA funds to restore the Civil War Soldiers Monument within Newton Cemetery, because that monument was owned by the City of Newton. In contrast, he did not feel CPA funding was totally appropriate for restoring private monuments such as the Whipple-Beal fence. He noted that the large signs at the Cemetery's main entrance state that "No public funds have been used to acquire or maintain this property." If CPA funds were used for private monuments, he would like to see that public funding limited to about 50% of total costs, compared to the approximately 80% requested in the current proposal. Finally, he noted that the proposal had not included the estimate the CPC had requested, at his urging, of the Cemetery's potential future costs to restore and repair other private monuments whose owners were no longer willing or able to care for them. He was concerned that funding this project at the requested level could set a precedent for an unknown total of future, larger CPA requests.

Yeo shared some of Robertson's concerns but supported the funding requested.

#### PUBLIC HEARING

On behalf of the League of Women Voters, Sue Flicop summarized their letter supporting CPA funding for the Whipple-Beal Fence. The request seemed modest, the Beal family was also contributing financially, and the site has excellent public access. They recommended installing more signage not only at the project site but also at the Cemetery entrance, both to acknowledge the use of CPA funds and to direct people to the Whipple-Beal lot. They also suggested considering a more durable, less maintenance-intensive material than cast iron for this restoration, such as ductile iron.

Robert Conley of Newton Centre said he had last spoken at a CPC public hearing in opposition to CPA funding for the Allen House. He suggested that rather than use CPA funds to restore the Whipple-Beal Fence, the Cemetery should recycle a chain-link fence from another project. He objected to using CPA funds for affordable housing and for City parks, which he believed should be funded from regular City revenues. He had asked that CPA funds be used for removing dead trees on private properties whose owners could not

otherwise afford this work. If CPA funds cannot be used for this purpose, he felt Newton should revoke its adoption of the CPA.

Yeo and Robertson explained that the state Community Preservation Act did not allow CPA funds to be used for maintenance on either public or private property, did allow their use for major park rehabilitation projects such as the Newton Highlands Playground off Winchester Street, and required that some CPA funds be used for affordable housing. They thanked Conley for his comments and encouraged him to contact his state legislators about changes he would like to see in the Community Preservation Act.

In preparation for their recommendation vote, at Ingerson's request the Committee confirmed that any grant agreement with the Newton Cemetery should make the initial release of CPA funds contingent on confirming the availability of all other funds listed in the proposal, and should make releasing the final 10% of any CPA grant contingent on recording a preservation restriction on the Whipple-Beal Fence, as well as on presenting the usually required final project report to the CPC.

VOTE Subject to the funding conditions above, Kronish made and Sargent seconded a motion to recommend appropriating the requested \$60,000 in CPA historic resources funding. The motion was approved 5-1, with Robertson opposed for the reasons he had cited during the discussion.

[Newton Homebuyer Assistance Program](#) – Planning & Development Department update, proposing to revise purpose from creating new affordable units to preserving the affordability of units already in the program, retaining \$735,000 and returning \$845,745 for other CPA-eligible housing purposes

This update and request was presented jointly by Planning Director Barney Heath, Housing Development Planner Amanda Berman, and Community Development Programs Manager Rachel Powers. Heath thanked the CPC for their patience in waiting to hear the Planning Department's plan for the approximately \$1.5 million of unspent CPA funds previously appropriated for this program. The department would like to preserve the full inventory of homebuyer units already subsidized, because it is so difficult to create new units and to provide affordable opportunities for homeownership in Newton. The program has been managed in different ways over the years, and the requirements imposed on units have changed over time. The Planning Department is committed to using funds efficiently and to a fair process for ensuring that these units go to the right new owners as they turn over.

Berman has been in her position since late August 2017. The Homebuyer Assistance program started in 2001 with CDBG funding, then phased in CPA funding starting in 2003. It provided one-time subsidies for first-time homebuyers with up to 80% of the Area Median Income (AMI), in return for deed restrictions ensuring the home's future affordability. Over the years, it had subsidized 52 units; 49 remain in the program, after 3 were eventually sold at full market value. The program was put on hold in 2015, in response to temporary staff vacancies and because it had become increasingly difficult for the program to fill the gap between the private resources available to income-qualified first-time buyers and Newton's rising housing prices. Until 2013, the program was run on a first-come, first-served basis. In 2013, the program began choosing participants through a lottery, so the homes purchased could be added to the state's Subsidized Housing Inventory (SHI). Unfortunately, the 3 households who won the first lottery then found themselves competing with each other for the very limited pool of units that they could afford in Newton, even with the program's subsidies.

In response to Sargent, Heath and Berman explained that all the deed restrictions set a maximum resale price and limited the appreciation that the assisted owners could receive as a result of resales, but there was great variation among the restrictions. Berman said most restrictions give the City only 120 days to find a new income-qualified buyer after being notified that the current owner intends to sell the unit. In response to Kronish, Powers said the department publicized resales to its long mailing list of people seeking affordable housing in Newton and also announced these opportunities in several other ways.

Powers summarized the department's plan to shift the program from creating new affordable units to preserving affordability for the 49 units already subsidized. As the current owners of these units put their homes up for sale, the department would offer additional subsidies to new buyers of those units, up to a cumulative maximum per-unit subsidy of \$255,000 for one-bedroom units, \$285,000 for two-bedroom units, and \$315,000 for three-bedroom units. The additional subsidies would be designed to make the homes affordable to new buyers at up to 70% rather than 80% AMI. The department would not attempt to add the program's units to the SHI, to avoid both the staff workload and the competition among subsidized buyers created by holding a lottery. New, consistent deed restrictions would be recorded as part of the resale process.

Berman and Powers explained that the Planning Department would like to retain \$35,000 of the already appropriated CPA funds for program administration and management, \$50,000 to rehabilitate resold units to meet the federal Housing Quality Standards (HQS), and \$650,000 for additional subsidies to new buyers. They believe this retained \$735,000 would allow the department to rehabilitate and resubsidize approximately 4 homebuyer units over the next 2 years. Since resales occur unpredictably and the City must meet their complex, variable requirements quickly, the department intends to hire a specialized consultant to manage them. It also needs to recover the cost of its own staff time for the program, since CDBG-funded staff cannot to work on units that did not receive CDBG funding.

Robertson thanked the staff for their presentation and acknowledged that turnover within the Planning Department over the past few years had been a challenge for program continuity and consistency. He also understood the need to fund program administration costs. He observed that for the approximately 6% of the total units subsidized through the program that had been lost through market-rate resales, the perpetual affordability originally promised had turned out to last only about a decade.

Berman said the program lacked a comprehensive database and that records of past cases were not always easily accessible. In response to questions from Robertson and Kronish about exactly how the program loses units, Berman said these losses had occurred prior to the arrival of all current staff, but that the maximum resale price for each unit was dictated by its unique deed restriction. The formulas sometimes reflect the AMI both at the time of the initially subsidized purchase and at the time of resale. The restrictions generally allow the owner to recapture the resources he or she originally put into the purchase. Some also allow the owner to capture the value of capital improvements. Some allow the City to recapture public funds or a share of appreciation if no new income-qualified buyer can be found. Ingerson thought most restrictions with recapture provisions ensured that, in addition to recapturing the original public subsidy, the City also received the lion's share of any appreciation realized through market-rate sales, so resales did not generally create a windfall for the owner who benefited from the original subsidy.

Berman explained that in one recent case, one owner had purchased a duplex through the program had lived in one unit and rented the other to a Section 8 voucher holder, but the property later went into foreclosure. As holder of the deed restriction, the Newton Community Development Authority (NCDA) also had a right of first refusal. The NCDA, of which the Planning Director is the sole member, assigned that right to the Newton Housing Authority, which has acquired the property and is converting it into 2 rental units. Newton is using its CDBG funds to rehabilitate the building, which was significantly damaged by the previously subsidized owner/occupant.

Heath and Berman said that some previously deed-restricted units had probably been sold at market prices because the City could not find an income-qualified buyer who could afford the calculated resale price. As an illustration, the maximum allowable resale price for a 3-bedroom, single-family home currently being resold was \$365,000, about \$79,000 more than a current 80% AMI household could afford, and about \$100,000 more than a current 70% AMI household could afford. Luckily, the first of the six completed applications received had been from a household that could apparently afford this unit without an additional subsidy, thanks to one-time help from the buyer's family. More than a few of the owners already in the program apparently also had such family help, but Powers and Berman felt it was unrealistic to count on finding future buyers with similar private resources.

Robertson pointed out that one additional round of subsidies for potentially all 49 units still in the program would add up to a very large cumulative total, though the per-unit average public subsidy might still be less than the per-unit City funding for some housing development projects. He asked whether the department could set priorities within the portfolio, so it could use recaptured past subsidies or a share of appreciation from low-priority units to help preserve high-priority units. Ingerson noted that special assessments and condo fees made some units less affordable and sustainable than others. For example, the owner of one small homebuyer unit in a large building had been unsuccessful in challenging a special assessment for shoveling the snow off residents' cars in the parking lot, even though she was happy to shovel out her own car.

Berman was not sure the City could legally prioritize some units for preservation and others for recapture. She thought some current deed restrictions required the City to look actively for a new income-qualified buyer upon resale, but would remain in force if that search failed and the unit were sold to a higher-income buyer. In such cases, the City was still obligated to repeat its search for another income-eligible buyer at the next resale, so these restrictions may simply not allow the City to recapture either its subsidy or any share of appreciation through a market-rate sale. In addition, since the City staff or consultants must spend considerable time managing every resale, regardless of its outcome, they would prefer to use that time to preserve affordable units rather than to recapture funds.

Berman understood why the Committee might be concerned about the potential cumulative cost of the new subsidies needed to preserve the program's full portfolio. In addition, even if all units eventually used the standard deed restriction from the state Department of Housing and Community Development, that might not eliminate the need for a further additional subsidy upon each future resale, indefinitely into the future. Kronish and Brody also recognized this possibility. They noted that, since the 1970s, below-median incomes had not kept up with increases even in the AMI itself, much less with increases in the Consumer Price Index (CPI), which in turn had lagged far behind the real estate market in greater Boston. As long as these trends continue, if the program's deed restrictions allow subsidized owners to recapture their own investments and any appreciation, the original subsidy that made the unit affordable to households at some percentage of the AMI would not keep that unit affordable to future buyers at the same percentage of the AMI.

Brody suggested indexing future resale prices to changes not in the AMI itself, but in household incomes at the program's targeted income level. Kronish thought this would help with the ongoing cost of ownership but that future households would still struggle to afford downpayments without additional one-time help from sources other than the program. Heath felt that reducing the target income level from 80% to 70% AMI would help with this, but Kronish thought this might increase rather than reduce the need for future additional subsidies.

Sargent recognized that reducing the target population from households at 80% AMI to those at 70% AMI was appealing, but he wondered whether the program could be made more sustainable by doing the reverse – targeting households at the maximum CPA-eligible income level of 99% AMI. He felt these households might be able to afford the deed-restricted resale prices without additional subsidies. Heath said the Planning Department would not object to that approach.

Brody, Robertson and Kronish wondered whether the future affordability of ownership units could be ensured by reducing the downpayment, or providing mortgages at extra-low rates. Kronish said the Massachusetts Affordable Housing Alliance had successfully pressured banks to provide deeply discounted second mortgages. He asked whether the City of Newton could bring similar pressure on the banks that hold its municipal accounts. Heath believed the City government would not be interested in that approach, and that the Planning Department did not have the capacity to manage mortgages. Peter Sargent thought that function would have to be assumed by a bank.

Berman said that all affordable housing needed to be resubsidized periodically, and that deed-restricted rental units did not request such additional public subsidies only because their owners/landlords resubsidized them in other ways. Kronish therefore thought the best solution was ownership by an organization with a long-term commitment to affordability, as with the conversion from ownership to rental housing of the duplex described earlier, acquired by the Housing Authority. Ingerson noted that not all homebuyer units could be converted to

rental units, particularly in large condominium complexes. Robertson thought there was still something to be said for empowering people as homeowners.

Sargent and Robertson urged the Planning Department to include in any full proposal an analysis of how homeownership programs in other communities were handling the issues identified in tonight's discussion. Robertson also hoped that if the proposed 2-year pilot phase were approved, the department would use it to find a way to make the revised program sustainable in the future.

Ingerson explained that the normal, site-specific housing proposal form did not work well for this program. Committee members suggested that the Planning staff work with Ingerson to adapt the format of the last successful refunding proposal for this program, in 2015, to present the new request.

Heath said the Planning Department would aim to submit the new proposal in January, for a February public hearing and CPC vote, which could then go to the City Council in time to make funds available for resubsidizing existing units starting in March. In response to Yeo, Ingerson advised that although both the preservation and the creation of affordable housing are CPA-eligible, she felt the CPC needed the City Council's approval to redirect the already appropriated funds to preservation, since the 2013 and 2015 proposals and associated CPC recommendations had specifically committed to creating 6 new units.

**VOTE** Robertson moved and Brody seconded a motion to to consider an amended proposal from the Planning Department, based on the memo submitted for tonight's discussion and addressing the issues raised during the discussion, to retain about \$735,000 of CPA funds already appropriated for the Homebuyer Assistance Program to preserve the affordability of already subsidized units, and to return the remainder of those already appropriated funds for other CPA-eligible affordable housing uses. The motion was approved by a vote of 6-0.

### **Committee Business**

Based on a motion by Kronish, seconded by Sargent, the minutes for 12 October 2017 were approved by a vote of 6-0.

Ingerson noted that this was the final CPC meeting for member and former chair and vice chair Jim Robertson. All Committee members thanked Robertson for his service, and Robertson expressed his appreciation for his colleagues on the Committee.

The Committee then adjourned by consensus at 8:37 pm.