



# City of Newton, Massachusetts Community Preservation Committee



David B. Cohen  
Mayor

**TO:** Honorable Board of Aldermen  
**FROM:** Community Preservation Committee  
**DATE:** March 13, 2007  
**RE:** **CPC Recommendation for CPA Funding**

**PROJECT TITLE:** Acquisition of 20 Rogers Street Property  
**CPA CATEGORY:** Recreational Use  
**RECOMMENDED CPA FUNDING:** \$2,300,000 (to be bonded over 10 years)

### PROJECT DESCRIPTION:

The applicant, Mayor David B. Cohen, proposes to acquire the 20 Rogers Street property, adjacent to the City’s existing facilities at Crystal Lake, for recreational purposes. Crystal Lake has been a summer tradition for many thousands of Newton residents since the City was granted authority over it by the Commonwealth of Massachusetts in 1924. For more than eight decades, this unique community recreational facility has provided thousands of citizens with a refuge from the summer heat, swimming programs for nine separate camps and community organizations, and a chance to meet, congregate, and enjoy passive and active recreation with other Newtonians in a relaxed atmosphere. Today is a unique time in our City history, where we have the ability to acquire the property adjacent to our current Crystal Lake facility. This is an opportunity that comes once in a generation, and its acquisition enables our community to preserve and potentially improve on a facility that hosted more than 16,500 patrons last year, including 450 kids in summer schools and camps and more than 400 senior citizens.

The total amount recommended for this project is \$2,300,000, to be bonded over a 10-year period. Mayor David B. Cohen proposes to acquire the property for fair market value. As required by law, the City had the property independently appraised, and is prepared to offer the appraised value, \$2.3 million, for the property.

### PROJECT EVALUATION

#### Community Preservation Act (MGL c.44B)

##### Definition of Terms

Section 5(b)(2) of the Community Preservation Act reads as follows as it relates to recreation projects:

“The community preservation committee shall make recommendations to the legislative body for the ..... acquisition, creation, and preservation of land for recreational use; ..... and for the rehabilitation or restoration of ..... land for recreational use ..... that is acquired or created as provided in this section.”

Pertinent definitions from Section 2 of the Act are as follows:

“ ‘**Recreational use**’, active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth or adult sports, and the use of land as a park, playground, or athletic field. ‘Recreational use’ shall not include horse or dog racing or the use of land for a stadium, gymnasium, or similar structure.”

“ **Acquire** ’, obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. "Acquire" shall not include a taking by eminent domain, except as provided in this chapter.

“ **Real property** ’, land, buildings, appurtenant structures and fixtures attached to buildings or land, including, where applicable, real property interests.

Discussion/Findings

The Community Preservation Committee makes the following factual findings regarding the 20 Rogers Street PROJECT.

1. The acquisition of 20 Rogers Street will allow the City of Newton unimpeded access to fix the retaining wall on the 20 Rogers Street property that is in disrepair and represents a public safety hazard. The City hired an independent geotechnical engineering and environmental consulting firm in May 2006 to analyze the retaining wall located on the 20 Rogers Street property. The firm (GZA Geoenvironmental, Inc.) concluded, “It is GZA’s opinion that there is a significant threat of overturning instability. Although the exact time to failure is unknown, eventual failure is likely due to continued frost jacking, unless remedial measures are undertaken.” For two years, the City has appealed to the owner of 20 Rogers Street to fix the wall on his property to no avail. Owning the property would enable the City to eliminate this public safety hazard once and for all.
2. The acquisition of 20 Rogers Street will enable the City of Newton to re-open “Left Beach,” the beachfront adjacent to the retaining wall. Although the City of Newton and the general public have co-equal rights to use Left Beach, for the past two summers, the City has been forced to cordon off Left Beach due to the safety hazard of the retaining wall, and the current owner’s steadfast refusal to repair it. Left Beach makes up 190 linear feet of the total 290 linear feet of sandy beach at Crystal Lake. In addition, Left Beach features eight benches, the only on site seating available. Closing Left Beach resulted in only 100 linear feet of sandy beach with no seating the past two summers.
3. The acquisition of 20 Rogers Street will enable the City to improve existing facilities at Crystal Lake and offer residents the full range of active and passive recreational opportunities at Crystal Lake.

Based on the extensive testimony, a petition signed by more than 400 citizens, and written letters of support, the Committee finds that the PROJECT constitutes the acquisition of land for recreational use.

The PROJECT fits the pertinent definitions from Section 2 of the Act.

Conclusion

The Community Preservation Committee has concluded, after a careful reading of MGL Chapter 44B, as amended, and a thorough review and analysis of the PROJECT that the proposal meets all of the requirements of the law for funding as a CPA project.

**Newton Community Preservation Plan**

Overarching Goals

1. Contribute to the preservation of Newton’s unique character, boost the vitality of the community and enhance the quality of life for its residents.	Yes
2. Serve more than one CPA category.	No
3. Demonstrate the highest cost/benefit value relative to other proposals.	See below
4. Leverage other public and/or private funds.	No
5. Preserve a resource or opportunity that would otherwise be lost.	Yes
6. Show that the project is the most reasonable available option to achieve the objective.	Yes, see below
7. Demonstrate strong community support.	Yes, see below
8. Serve to equitably distribute CPA funds throughout the City.	Yes

Additional comments on selected goals:

Goal 3: Compared to other recreation projects, the PROJECT is expensive, however, the acquisition of 20 Rogers Street is an opportunity that comes along only once in a generation and will serve thousands of Newton residents.

Goal 6: The Committee notes that the 20 Rogers Street property is currently encumbered by roughly \$12 million in liens. The City Solicitor has determined that the only method for the City to obtain a clear title to the property is to acquire it by eminent domain. The City has been in touch with the federal (IRS) and the state (Mass. DOR) governments, who hold \$6 million of the liens, and we are confident that the City will be provided with a release from these obligations. Although eminent domain extinguishes the liens as described above, the underlying \$12 million debt will remain the responsibility of the current owner – not the City. The privately held liens are extinguished as a matter of law upon completion of the eminent domain process.

Goal 7: There is overwhelming community support for the PROJECT, with little opposition. Public support and opposition were both expressed at hearings and in written correspondence to the CPC. Support comes from neighbors, residents of the Newton Highlands, as well as swimmers and parents across the City who believe this expands a critically important community resource.

Recreation Goals

1. Address the needs targeted in the <i>Recreation and Open Space Plan 2003-2007</i> and priorities as identified by the Parks and Recreation Department and Commission and take advantage of other opportunities to meet the recreation needs of the residents of the City.	Yes, see below
2. Demonstrate that the proposal is planned with consideration for the current and future needs and vision of the park/recreation facility.	Yes
3. Meet the recreation needs of the greatest number of residents possible. This means that when faced with a decision between two or more projects, all other factors being equal, the one that serves the largest number of residents will be selected for consideration.	Yes, see below
4. Meet the greatest variety of recreation needs possible. The committee will favor projects that provide multiple recreation opportunities in a given location.	Yes
5. Serve passive as well as active uses. Finding ways to balance the range of recreational opportunities and serve the diverse recreation needs of the community is a priority of the CPC.	Yes
6. Preserve sight lines consistent with open space... decisions about scale and placement should be made with the objective of enhancing or enabling open views.	No
7. Access for disabled residents should be included in plans wherever possible.	Yes, see below

Additional comments on selected goals:

Goal 1: The PROJECT would meet the active and passive recreational needs of a great number of City residents, including youth, a goal that is outlined in the City's *Recreation and Open Space Plan 2003-2007*. The Newton Parks and Recreation Commission submitted a letter recommending the acquisition of 20 Rogers Street as a top priority.

Goal 3: Based on the extensive testimony, a petition signed by more than 400 citizens, and written letters of support, the Committee finds that the PROJECT meets the recreational needs of the greatest number of residents possible.

Goal 7: Mayor David B. Cohen expects to establish an Advisory Committee that will conduct a community planning process to determine the exact nature of the future recreational use of the 20 Rogers Street property (together with the City's existing Crystal Lake facility) that will include access for disabled residents.

## **CPC RECOMMENDATION**

The PROJECT is consistent with the Community Preservation Act criteria and many of the plan's goals, as described above. In addition, the CPC has outlined its position on the legal appropriateness of the PROJECT, concluding that the PROJECT qualifies under MGL c.44B. Therefore, on March 7, 2007, the Community Preservation Committee voted 7-0, to recommend \$2,300,000, to be bonded over a 10-year period, to fund the acquisition of 20 Rogers Street, under the direction and control of the Planning and Development Department for purposes of the PROJECT as detailed in the application prepared by Mayor David B. Cohen. The CPC further recommends that:

1. The Mayor establish an Advisory Committee that will conduct a community planning process to determine the exact nature of the future recreational use of the 20 Rogers Street property (together with the City's existing Crystal Lake facility).
2. The Planning and Development Department submit to the CPC a status report on a quarterly basis until the property has been acquired.