

Current Proposals
FARLOW PARK
**for working session/
possible funding vote**



additional information submitted since 20 March 2014 working session:

- ◆ table of contents for new submissions
- ◆ 10-year operating budget
- ◆ Commissioner of Parks & Recreation letter re: maintenance
- ◆ City of Newton COO letter re: maintenance
- ◆ Friends of Farlow Park additional financial information (community fundraising)
- ◆ Friends of Farlow Park 501(c)3 articles of organization (filed with Mass. Sect'y of State)
- ◆ Community ltrs received after 26 February 2014 deadline: 1 in support, 1 in opposition
- ◆ Mass. State Ethics Commission conflict of interest advisory 05-02 for abutters (included at the request of Mr. Carter; relevant to process for recommending/committing CDBG funds)

Additional Information related to the Farlow Park Restoration
and Rehabilitation Proposal

April 7, 2014

In response to the Community Preservation Committee's request for more information regarding the Farlow Park Restoration and Rehabilitation proposal, the Friends of Farlow Park and the City of Newton Parks and Recreation Department are providing the following documents.

1. A ten-year budget outlining maintenance costs for the Farlow Park Restoration Project.
2. A letter from Commissioner Bob DeRubeis stating that the Parks and Recreation Department will be able to defray these costs.
3. A letter from Chief Operating Officer Bob Rooney stating the City of Newton's intention to cover project maintenance costs from offsetting savings that derive from switching from MDC water to well water (approx. \$4000 a year savings)
4. Additional Financial Information from the Friends of Farlow Park outlining our intention to raise up to \$30,000 beyond the \$89,000 we have previously agreed to raise.
5. A copy of the Friends of Farlow Park, Inc. 'Articles of Organization' successfully filed with the Commonwealth of Massachusetts' Secretary of State's CORPORATIONS DIVISION.

**Additional Farlow Park 10-Year Maintenance Costs
Related to Proposed Pedestrian Bridge and Reflecting Pond Only
April 2, 2014**

A. PEDESTRIAN BRIDGE

Description	Hours Over 10 Years	Hourly Rate	Subtotal	Total Cost Over 10 Years
structural check (2 hrs per year)	20	\$ 25	\$ 500	\$ 500
repaint/touch up railings (3 days over 10 years)	24	\$ 25	\$ 600	\$ 600
graffitti removal (2 days over 10 years)	16	\$ 25	\$ 400	\$ 400
repair brick paver bridge surface* (.5 day every other year)	40	\$ 25	\$ 1,000	\$ 1,000
Total Cost to Maintain Bridge over 10 Years:				\$ 2,500

B. REFLECTING POND

Description	Hours over 10 years	Hourly Rate	Subtotal	Total Cost Over 10 Years
<i>assumes pond water-filled April - Oct. season [28 wks]</i>				
spring check: drain/repair/clean basin & edge: 1 day per year	80	\$ 25	\$ 2,000	\$ 2,000
clear leaves/trash/debris from water (1 hr/week every other week)	140	\$ 25	\$ 3,500	\$ 3,500
<i>assumes ice-filled December-February (12 weeks)</i>				
drain system/fill and prepare for skating season (.5 day per year)	40	\$ 25	\$ 1,000	\$ 1,000
check system/weatherize (2 hrs/yr)	20	\$ 25	\$ 500	\$ 500
spray/smooth ice for winter skating (1 hr/wk for 12 weeks)	120	\$ 25	\$ 3,000	\$ 3,000
subtotal:				\$ 10,000

Labor and Materials - Pond Replacement Parts as Needed	Quantity over 10 Years	Unit Cost	Subtotal	Total Cost Over 10 Years
Replace aeration device	1	\$ 250	\$ 250	\$ 250
Replace pump	1	\$ 10,500	\$ 10,500	\$ 10,500
Replace water level sensor	1	\$ 75	\$ 75	\$ 75
subtotal:				\$ 10,825

Total Cost to Maintain Reflecting Pond over 10 Years: \$ 20,825

Utilities	Years	Unit Cost	Subtotal	Total Cost Over 10 Years
Electric cost to run well pump	10	\$ 690	\$ 6,900	\$ 6,900

Total Cost to Maintain Reflecting Pond and Bridge over 10 Years: \$ 30,225



SETTI D. WARREN
MAYOR

NEWTON PARKS AND RECREATION DEPARTMENT

124 Vernon Street, Newton, MA 02458
Office: (617) 796-1500
Fax: (617) 796-1512



ROBERT J. DERUBEIS
COMMISSIONER

April 11, 2014

Joel Feinberg, Chair
Community Preservation Committee
1000 Commonwealth Avenue
Newton, MA 02459

Dear Chairman Fineberg and Community Preservation Committee Members,

I am writing with respect to the Farlow Park Restoration and Rehabilitation. A concern that has been brought up during working sessions are the maintenance costs associated with the project. Farlow Park is a site that is currently maintained by Parks & Recreation. Inclusive in that maintenance cost is general litter pick-up, grass cutting and leaf removal.

With the proposed pedestrian bridge and reflecting pond, we have identified some additional maintenance issues that will warrant our attention. Based on departmental calculations, these costs would be in the vicinity of \$2,800 to \$3,000 per year on average. Some of the maintenance items identified are currently being addressed and the new ones can be absorbed by the department. As the Commissioner, I am confident that realizing the aforementioned costs is one that the department can handle and we are comfortable maintaining this site.

I would ask that you act favorably upon this project and support it through to completion.

Sincerely,

Robert J. DeRubeis
Commissioner

Cc: Alice E. Ingerson, Ph.D., Community Preservation Program Manager
Carol Schein, Open Space Coordinator
Keith Jones, Chair, Friends of Farlow Park

COMMISSION
MEMBERS

WARD 1 - BETHEL CHARKOUDIAN
WARD 2 - ARTHUR MAGNI, CHAIRMAN
WARD 3 - PETER JOHNSON

WARD 4 - FRANCIS J. RICE
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WARD 6 - ANDREW STERN

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ROBIN MCLAUGHLIN - COMM. SECRETARY

ALTERNATES: MICHAEL CLARKE, PETER KASTNER, JACK NEVILLE, DONALD FISHMAN

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April 9, 2014

Joel Feinberg, Chair
Community Preservation Committee
1000 Commonwealth Avenue
Newton, MA 02459

RE: Farlow Park Proposal for CPA Funding

Dear Chairman Feinberg and Members of the CPC,
I am writing regarding a project proposal before you, the Farlow Park Restoration. As you're aware, this project restores the original historical attributes of the park, to include a pond and a new footbridge. The proposal to irrigate the site and provide water for the pond is through activating an existing well that provides adequate flow, requiring only the addition of a pump.

Currently, irrigation water for the fields is provided from the Underwood School, an operation that incurs not only water costs as billed by the prevailing rates, but also sewage costs, despite the fact that this irrigation water only, as there is no means to isolate the usage. While the annual cost can only be estimated based on the length of time and area of land irrigated, but such usage typically costs thousands of dollars per year. This water cost could be all but mitigated by converting to well usage, except there will be new costs for electricity which is normally in the range of a few hundred dollars per year.

It is anticipated that there will be increased maintenance costs for the park after build out, however it is projected that such costs will be less than savings from the conversion of the irrigation source, or most conservatively, at least revenue neutral. As the City budget is derived with an "outcome-based approach" (not a dollar-for-dollar transfer), should this park project move forward and be developed, the City would support the increased maintenance costs through the Parks & Recreation Department's budget, anticipating that savings are realized in another department's budget.

I hope this helps in your deliberations as to the funding of this worthy project. Should you have further financial questions regarding this project, feel free to contact Maureen Lemieux, the Chief Financial Officer at 617-796-1100.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Rooney".

Robert R. Rooney
Chief Operating Officer

Cc: Scott Lennon, President of the Board and Ward 1 Alderman
Maureen Lemieux, Chief of Staff and Chief Financial Officer
Bob DeRubeis, Parks and Recreation Commissioner

Friends of Farlow Park

Additional Financial Information

During the CPC meeting on March 20, 2014 some questions were raised regarding whether the Friends of Farlow were anticipating taking care of Farlow Park once the restoration was completed. At that time we asserted that this is a City owned Park and that maintenance and utility expenses would be more than covered by the approximately \$5000 in savings in irrigation costs when a switch is made from water supplied by the MDC to well water. This was not only our opinion but was backed up by discussions we had had with Commissioner Bob DeRubeis at Parks and Recreation.

However, the Friends of Farlow Park has considered the concerns expressed by the CPC members as to what anticipated costs might take place and whether the Friends of Farlow will be available to help out. Taking into consideration the concerns expressed, the Friends of Farlow Park has committed to seeking donations of up to \$30,000 beyond the \$89,000 we have agreed to raise within our proposal.

These monies will be held in our account to be used for the following:

1. Cost overruns.
2. Future projects such as plantings and other ancillary needs such as new benches.
3. Emergency Maintenance, if Friends of Farlow Park determines the City of Newton has failed to fulfill its maintenance commitment.



The Commonwealth of Massachusetts
William Francis Galvin

Minimum Fee: \$35.00

Secretary of the Commonwealth, Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108-1512
Telephone: (617) 727-9640

Articles of Organization

(General Laws, Chapter 180)

Federal Employer Identification Number: 465016007 (must be 9 digits)

ARTICLE I

The exact name of the corporation is:

FRIENDS OF FARLOW PARK, INC.

ARTICLE II

The purpose of the corporation is to engage in the following business activities:

TO RAISE MONIES AND RECEIVE DONATIONS AND GIFTS OF ANY KIND TO THE SUPPORT T
HE RESTORATION AND IMPROVEMENT OF THE BRIDGE AND POND LOCATED IN HISTORIC
FARLOW PARK IN THE NEWTON CORNER SECTION OF THE CITY OF NEWTON, MASSACHU
SETTS. TO CONDUCT ANY OTHER ACTIVITY OR EXERCISE SUCH OTHER EFFORT THAT MAY
BE NECESSARY OR INCIDENTAL THERETO THAT WILL HELP TO PRESERVE AND PROTECT T
HE SAME IN ORDER TO ALLOW ITS CONTINUED USE AND USED BY THE PUBLIC IN THE FUT
URE. TO OTHERWISE CARRY ON ANY OTHER RELATED ACTIVITY THAT WILL SUPPORT AND
BENEFIT THE ABOVE PURPOSES BY OUR ORGANIZATION AND CONSISTENT WITH ITS OBLI
GATIONS DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE BY A CORP
ORATION ORGANIZED UNDER CHAPTER 180 OF THE MASSACHUSETTS GENERAL LAWS.

ARTICLE III

A corporation may have one or more classes of members. If it does, the designation of such classes, the manner of election or appointments, the duration of membership and the qualifications and rights, including voting rights, of the members of each class, may be set forth in the by-laws of the corporation or may be set forth below:

NONE.

ARTICLE IV

Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:

(If there are no provisions state "NONE")

NO SUBSTANTIAL PART OF THE ACTIVITIES OF THIS CORPORATION SHALL BE THE CARRYI
NG ON OF THE PROPAGANDA, OR OTHERWISE ATTEMPTING TO INFLUENCE LEGISLATION
(EXCEPT AS OTHERWISE PROVIDED BY SECTION 501 (H) OF THE INTERNAL REVENUE COD
E), AND THIS CORPORATION SHALL NOT PARTICIPATE IN, OR INTERVENE IN (INCLUDING T
HE PUBLISHING OR DISTRIBUTION OF STATEMENTS), ANY POLITICAL CAMPAIGN ON BEHA
LF OF, OR IN OPPOSITION TO, ANY CANDIDATE FOR PUBLIC OFFICE. NOTWITHSTANDING,

ANY OF THE PROVISIONS OF THESE BYLAWS, THIS CORPORATION SHALL NOT CARRY ON ANY ACTIVITIES NOT PERMITTED TO BE CARRIED ON (A) BY A CORPORATION EXEMPT FROM FEDERAL INCOME TAX UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE, OR (B) BY A CORPORATION, CONTRIBUTIONS TO WHICH ARE DEDUCTIBLE UNDER SECTION 170 (C)(2) OF THE INTERNAL REVENUE CODE. NO PART OF THE NET EARNINGS OF THIS CORPORATION SHALL INURE TO THE BENEFIT OF, OR BE DISTRIBUTABLE TO, ITS' MEMBERS, ITS' DIRECTORS OR TRUSTEES, OFFICERS, OR OTHER PRIVATE PERSONS, EXCEPT THAT THE CORPORATION SHALL BE AUTHORIZED AND EMPOWERED TO PAY REASONABLE COMPENSATION FOR SERVICES RENDERED AND TO MAKE PAYMENTS AND DISTRIBUTION IN FURTHERANCE OF THE PURPOSES OF THE CORPORATION.

Notes: The preceding four (4) articles are considered to be permanent and may only be changed by filing appropriate Articles of Amendment.

ARTICLE V

The by-laws of the corporation have been duly adopted and the initial directors, president, treasurer and clerk or other presiding, financial or recording officers, whose names are set out on the following page, have been duly elected.

ARTICLE VI

The effective date of organization of the corporation shall be the date approved and filed by the Secretary of the Commonwealth. If a *later* effective date is desired, specify such date which shall not be more than *thirty days* after the date of filing.

04/07/2014

ARTICLE VII

The information contained in Article VII is not a permanent part of the Articles of Organization.

a. The street address (post office boxes are not acceptable) of the principal office of the corporation in Massachusetts is:

No. and Street: 109 VERNON ST
 City or Town: NEWTON State: MA Zip: 02458 Country: USA

b. The name, residential street address and post office address of each director and officer of the corporation is as follows:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code	Expiration of Term
PRESIDENT	KEITH M JONES	109 VERNON ST NEWTON, MA 02458 USA 109 VERNON ST NEWTON, MA 02458 USA	02/02/2016
TREASURER	JANET J STERMAN	120 CHURCH ST NEWTON, MA 02458 USA 120 CHURCH ST NEWTON, MA 02458 USA	02/02/2014
SECRETARY	JAY C WALTER	83 PEMBROKE ST NEWTON, MA 02458 USA 83 PEMBROKE ST NEWTON, MA 02458 USA	02/02/2016
VICE PRESIDENT	JAY C WALTER	83 PEMBROKE ST NEWTON, MA 02458 USA 83 PEMBROKE ST NEWTON, MA 02458 USA	02/02/2016
DIRECTOR	KARNIG BOYAJIAN	34 ELDREDGE ST NEWTON, MA 02458 USA 34 ELDREDGE ST	02/02/2016

		NEWTON, MA 02458 USA	
DIRECTOR	MAUREEN O'HARE MERCER	173 OAKLEIGH RD NEWTON, MA 02458 USA 173 OAKLEIGH RD NEWTON, MA 02458 USA	02/02/2016
DIRECTOR	CAROL A CONNOLLY	34 WAVERLY AVE NEWTON, MA 02458 USA 34 WAVERLY AVE NEWTON, MA 02458 USA	02/02/2016

c. The fiscal year (i.e., tax year) of the business entity shall end on the last day of the month of:
December

d. The name and business address of the resident agent, if any, of the business entity is:

Name: KEITH M. JONES
No. and Street: 109 VERNON ST
City or Town: NEWTON State: MA Zip: 02458 Country: USA

I/We, the below signed incorporator(s), do hereby certify under the pains and penalties of perjury that I/we have not been convicted of any crimes relating to alcohol or gaming within the past ten years. I/We do hereby further certify that to the best of my/our knowledge the above-named officers have not been similarly convicted. If so convicted, explain:

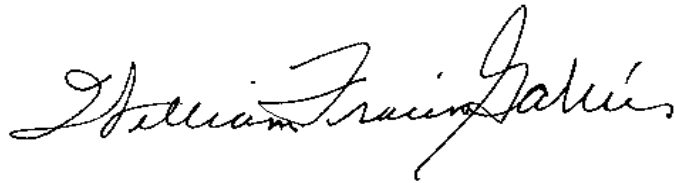
IN WITNESS WHEREOF AND UNDER THE PAINS AND PENALTIES OF PERJURY, I/we, whose signature(s) appear below as incorporator(s) and whose name(s) and business or residential address (es) beneath each signature do hereby associate with the intention of forming this business entity under the provisions of General Law, Chapter 180 and do hereby sign these Articles of Organization as incorporator(s) this 7 Day of April, 2014. (If an existing corporation is acting as incorporator, type in the exact name of the business entity, the state or other jurisdiction where it was incorporated, the name of the person signing on behalf of said business entity and the title he/she holds or other authority by which such action is taken.)

JANET J. STERMAN

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are deemed to have been filed with me on:

April 07, 2014 09:52 PM

A handwritten signature in black ink, reading "William Francis Galvin". The signature is written in a cursive style with a large initial 'W' and 'G'.

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth

From: Maureen O'Hare Mercer <senseables@gmail.com>
Subject: **CPC letter (please forward) in support of Farlow Park proposal**
Date: March 9, 2014 at 7:16:20 PM EDT
To: Keith Jones <keith.mjones@verizon.net>

Dear Alice and CPC Members,

Allow me to introduce myself ,

I am a 32 year resident of the Hunnewell Hills neighborhood in Newton corner and the former chairperson of the Underwood Playground & Beautification Committee. I had all three of my children attend Underwood in the 1990's .

Way back then, we started the outdoor classroom and salvaged the stones from the Old Library to preserve the capstone of Newton Corner. We were able to attract a former Underwood student (then a grown man) who did the stone carvings on Vernon Street as his legacy to the school project of the early 90's.

It was the intention of that committee and the parents of that generation to complete our restoration vision by beginning the " Bring Back the Bridge" sentiment . From those many volunteer years grew " The Friends of Farlow Park ". It has been a long and arduous volunteer time waiting for all parties to be aligned under the idea that the bridge should be an architecturally significant restoration and not a "chain link eyesore " on such an esteemed piece of Newton green space. The longstanding childhood neighbors remember ice skating at Farlow as children and hope to see their grandchildren enjoy this transformative aspect of the park .The MacGillvray family of Maple Terrace was my original source for that anecdote, although there are others !

My professional background is twofold,

I am the Principal Owner of a design firm which specializes in architectural finishes including repurposing period pieces onto structures as well as a niche business of consulting on historic colors. I have done consulting all over the city on various residential facades as well as commercial properties. I designed the sign at the now multipurpose Church (formerly the Greek Orthodox Church) on Center Street as well as consulting on interior work at the Presbyterian Church .

I know many of these abutting churches enjoy picnics in Farlow Park and would be thrilled to see this project come to fruition . My other professionally relevant work is in fundraising . While being a Board Member at these various entities I have chaired auctions at Underwood , the YMCA and the Fessenden School raising over a million dollars in my lifetime for building projects which benefited the children of Newton . Lastly , I have been teaching Learning by Design at the Cabot School for over five years . I know those parents to be extremely excited about having such an attractive feature in their own back yards .

My greatest hope is that this generation of Cabot and Underwood parents will see it realized for their youngsters to enjoy before they go off into the world as mine now have .

Respectfully submitted,
Maureen O'Hare Mercer
173 Oakleigh Road
Newton , MA.02458
617-285-8525

From: Steve Carter [mailto:sjkcs48@yahoo.com]
Sent: Friday, April 11, 2014 6:38 PM
To: Alice Ingerson for the Community Preservation Committee
Subject: **Farlow Park Pond & Bridge – [Additional] Written Comments**

Dear Ms. Ingerson,

As discussed, I am requesting that this email be included in the pre-meeting packet for the 04/30/14 CPC meeting.

I attended the 03/20/14 CPC meeting which included a working session regarding the Farlow Park Pond & Bridge Project. I was pleased to see that all members insisted that the project proponents develop a multi-year plan for the maintenance of the pond and bridge. Although I would agree that new construction should not require much maintenance for the first few years, but as you know this project is a combination of new construction and restoration of a pond bed that has been covered for 60 years. I understand that the tests performed appear to show that the pond base is solid in spots, however the true condition will not be known until all of the soil is removed from the pond area.

Maintenance costs must also be sufficient to cover unexpected situations, especially when it comes to vandalism. Unfortunately, graffiti and other forms of vandalism is a serious problem, as we can clearly see with the damages to the gazebo on the grounds of the Parks and Recreation Department facility.

At a recent Newton Corner Advisory Committee meeting, the Friends of Farlow Park made a presentation to the committee and interested citizens, requesting that the NCAC allocate CDBG funds for this project. At this meeting I asked whether swimming/wading would be allowed in the pond. The response I received was unclear. I understand that the Parks and Recreation Department has said that this pond will not have a "spray" device, but the cool water may be inviting to humans and animals on hot days. One member of the Friends of Farlow responded to my question by stating that there would be plantings around the border of the pond which would discourage anyone from entering the water. Other members disagreed and said that there were no plans for any plantings along the pond. The response that was agreed upon was that this project would not encourage swimming/wading and it would up to the Parks and Recreation Department to regulate activity in and around the pond. Does this mean that Parks and Recreation will be installing signs and enforcing regulations? Is this department prepared to take on this additional responsibility?

I also asked what the process will be for the once or twice per year drainage of the pond. I was told "there is a main-hole nearby", presumably to allow for drainage as would storm drains. I am not comfortable with that assumption. This "drainage system" probably hasn't been used or even inspected in 60 years. Will there be additional start-up expenses in this regard, or will this also be the responsibility of on-going maintenance?

I trust that you agree that these are important questions that should be addressed prior to approving additional funding.

Sincerely,

Steve Carter
48 Eldredge Street
617-332-7632



Setti D. Warren
Mayor

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

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Candace Havens
Director

Community Preservation Committee
MEMORANDUM

date: 14 April 2014
from: Alice Ingerson, Community Preservation Program Manager
to: Community Preservation Committee
about: **State Ethics Commission advisory in your 30 April 2014 packet --
relation to recommended non-CPA funds for Farlow Park**

In response to a request from Mr. Steve Carter, a member of the Newton Corner Advisory Committee for Newton's federally funded CDBG program, to Newton's Planning Department, the packet for your 30 April 2014 meeting includes a State Ethics Commission advisory about potential conflicts of interest for members of local government boards or commissions whose property abuts projects that come before those boards or commissions.

The Farlow Park proposal raises no such conflicts for the CPC itself.

However, at its most recent meeting, the Newton Corner Advisory Committee apparently recommended a significantly increased allocation of CDBG funds for the restoration/rehabilitation of Farlow Park, as part of the non-CPA "match" the CPC has been seeking for any CPA funds committed to that project.

Newton's current CDBG process requires the Planning & Development Board to review such neighborhood committee recommendations before they go to the Mayor, who is the only authority empowered to commit Newton's CDBG funds.

Before the Newton Corner Advisory Committee's latest funding recommendation for Farlow Park goes to either the P&D Board or the Mayor, the Planning Dept. will urge any committee members who own property abutting this park to contact the City of Newton Law Dept. for guidance.

website www.newtonma.gov/cpa

contact Alice E. Ingerson, Community Preservation Program Manager

email aingerson@newtonma.gov *phone* 617.796.1144

Preserving the Past  Planning for the Future

<http://www.mass.gov/ethics/education-and-training-resources/educational-materials/advisories/advisory-05-02-abutting-property.html>

Advisory 05-02: Voting on Matters Affecting Abutting or Nearby Property

The conflict of interest law is intended to ensure that public employees act in the best interests of the citizens they represent, and do not pursue their own self-interests or other private interests. The law prohibits a public employee from participating, by voting, discussing, delegating or otherwise acting, in any matter that affects:

- his or her own financial interests or those of a business partner;
- the financial interests of his or her immediate family members (i.e., the employee's spouse; and the parents, siblings and children of either the employee or the employee's spouse);
- the financial interests of a private or "after-hours" employer, or anyone with whom the employee is negotiating or has an arrangement for prospective employment; or
- any organization, either charitable or for-profit, in which the employee is serving as an officer, director, partner or trustee.

The term "public employee" includes both elected and appointed state, county and municipal employees, whether paid or unpaid, full-time or part-time. An unpaid volunteer board member as well as, in some instances, a consultant who is a contractor are considered public employees for purposes of the conflict of interest law.

I. PARTICIPATION IN A PARTICULAR MATTER

The conflict of interest law defines participation as participating in agency action or in a particular matter personally and substantially through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. Thus, a public employee participates not only when he makes a final decision or vote on a matter, but also when he discusses the merits of a matter with a colleague or makes a "non-binding" recommendation. A particular matter is any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination or finding. ⁽¹⁾

II. DETERMINING PROHIBITED FINANCIAL INTERESTS

The restrictions of the conflict of interest law apply regardless of the size of the financial interest. They apply in any instance when the private financial interests are directly and immediately affected, or when it is reasonably foreseeable that the financial interests would be affected. Also, the conflict of interest law prohibits any type of official action in such matters, regardless of whether the proposed action would positively or negatively affect the private financial interests.

Example: An elected board of health member owns property abutting a proposed landfill. If the landfill is approved, it will negatively affect the value of the board of health member's property value. Despite the fact that it will negatively affect his property value, the board of health member is in favor of the landfill. He may not participate in the discussion and vote of the landfill. (As discussed below, an appointed board member may participate if he discloses and receive from his appointing authority an exemption that would allow him to participate.)

III. ABUTTING OR NEARBY PROPERTY MAY AFFECT A PUBLIC OFFICIAL'S FINANCIAL INTEREST

Under the conflict of interest law, a property owner is presumed to have a financial interest in matters affecting abutting and nearby property. Thus, unless she can clearly demonstrate that she does not have a financial interest, a public employee should not take any action in her official capacity on matters affecting property that is near or directly abuts:

- her own property;
- property owned by a business partner;
- property owned by any immediate family members;
- property owned by a private employer, or prospective employer; or
- property owned by any organization in which the public employee is an officer, director, partner or trustee.

Otherwise, she risks violating the conflict of interest law.

The following factors are considered to determine whether, in a particular situation, a person or organization has a financial interest in an abutting or nearby property. A financial interest is presumed whenever:

- her property directly abuts (i.e., it shares any part of a property line); or
- her property is directly opposite a street, public way or private way, or she is an abutter to an abutter within 300 feet of the property line; or
- she, because of an act or failure to act by the board or commission, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public; or
- the matter would otherwise alter her property value, rights, or use. For example, a property owner is presumed to have a financial interest in zoning changes, variances, nearby subdivision or development approvals, and roadway, sewerage or safety improvements.

Example: An appointed state employee is reviewing an environmental impact report for a large development. The development abuts property owned by his parents. The state employee must notify his appointing authority, i.e., the individual or board responsible for appointing the public employee to his position, and the State Ethics Commission of the conflict and may not participate in the matter unless he follows the exemption process discussed below.

Example: An elected planning board member is also a business owner. A residential subdivision application is filed with the planning board for property abutting her business. She must not participate in the subdivision application review and approval process.

IV. REBUTTING THE PRESUMPTION THAT A FINANCIAL INTEREST EXISTS

As discussed above, the Commission presumed that a property owner has a financial interest in matters affecting abutting and nearby property unless he can clearly demonstrate that he does not have such a financial interest. If a public official, in good faith, believes that no such financial interest, positive or negative, exists, he can rebut or refute that presumption by getting an independent real estate appraisal that concludes that the matter affecting the abutting or nearby property will not affect the financial interest of the public official. Such an appraisal should be a bona fide appraisal that includes such things as the credentials of the appraiser, sufficient detail about the property and the appraisal and a description of the basis of the opinion.

V. ABSTAINING WHEN A CONFLICT OF INTEREST OCCURS

Not only must a public employee abstain from voting when he has a conflict of interest, he may not participate in any official discussion of the matter. Ordinarily, the best course of action is simply to leave the room during the deliberation and vote of the board.

Example: A selectman who discusses the environmental and traffic impacts of a license application for a business located next to his property but abstains from the final vote will nevertheless have participated through his discussing the license application.

While a municipal employee and members of boards and commissions at both the state and municipal level are not required to disclose the reason for their abstention, an appointed state or county employee who would normally be required to participate in a particular matter as part of his job must disclose, in writing, to his state appointing official and the State Ethics Commission even if he wishes to abstain. The appointing official then determines if such an abstention should occur by following the exemption process discussed below. This disclosure is required even if the appointed state or county employee abstains.

VI. EXEMPTIONS

Statutory exemptions can, in certain instances, allow a public employee to take actions that would otherwise be prohibited.

State and County Employees

One exemption is available to all appointed state and county employees. This exemption is not available to any elected employee. As discussed above, an appointed state or county employee who would normally be required to participate in a particular matter as part of his job must disclose, in writing, to his appointing official and the State Ethics Commission the nature and circumstances of the matter and the financial interest. The appointing official, who receives the disclosure described above, may assume responsibility for the matter, assign responsibility for the matter to another employee or provide the state or county employee with a written determination allowing her to participate in the matter. Both the disclosure and the appointing official's determination are public records and, in addition, must be filed with the State Ethics Commission.

Example: A state employee responsible for approving small business grants must make a written disclosure to her appointing official when a grant application to fund expansion of a day care center across the street from her home is assigned to her and may not participate in reviewing the grant unless the appointing authority provides her with a written determination that will allow her to do so. Both the disclosure and the written determination must be filed with the State Ethics Commission.

Municipal Employees

As noted above, an appointed municipal employee may choose to abstain from a matter in which she has a prohibited financial interest and, if she does so, need not make a disclosure. In order to participate in a matter involving abutting property, a municipal employee must disclose, in writing, to her appointing official the nature and circumstances of the matter and the financial interest. The appointing official, who receives the disclosure described above, may assume responsibility for the matter, assign responsibility for the matter to another employee or provide the municipal employee with a written determination allowing her to participate in the matter. Both the disclosure and the appointing official's determination are maintained as a public record by the appointing official and are not filed with the State Ethics Commission.

This exemption is not available to any elected municipal employee.

Example: The appointed department of public works director may make a disclosure and receive a written determination from his appointing official that will allow him to negotiate a contract that will build a new road in front of his property or he may abstain and his appointing authority may assume responsibility for negotiating the contract or assign it to another. The exemption is not available to the elected Board of Health member approving septic systems in a subdivision abutting her property; rather, she must abstain.

An additional exemption is available to municipal employees. It allows a municipal employee to act provided that the particular matter is one of general policy and provided further that the issue affecting the private financial interests of the municipal official and his immediate family members also affects a "substantial segment" of the municipality's population. The Ethics Commission has advised that at least 10% of a municipality's population is a "substantial segment" for the purposes of the conflict of interest law; therefore, a municipal employee may act on matters affecting his own financial interests, or the interests of immediate family members, if the financial interest also affects at least 10% of his municipality's residents (as determined by the most recent federal census).

Example: An elected city councilor who owns a home in the city may participate in the establishment of residential tax rates. While the tax rate is a matter in which he has a financial interest, it is shared by more than 10% of the population, i.e., all homeowners in the municipality.

VII. RULE OF NECESSITY

If more than one member of a board or committee is disqualified because of actual conflicts of interest, the board may not be able to act because it does not have a quorum. (If the number for a quorum is not set by law, a quorum is generally a majority of the board members.) In these instances, as a matter of last resort, the board can use what is called the rule of necessity to permit the participation of the disqualified members in order to allow the board to act. Prior to invoking the rule of necessity, public officials should review the Ethics Commission's Primer on Self-Dealing, Financial Interests and the Rule of Necessity or contact the city solicitor, town counsel or the Ethics Commission.

VIII. CONCLUSION

While certain private relationships may not trigger the restrictions discussed above, they may require disclosure and compliance with other sections of the conflict of interest law. Again, for further advice, contact your town counsel, city solicitor or the Legal Division of the State Ethics Commission at 617-371-9500.

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FOOTNOTE

^{1/}Note, however, that general legislation is not a particular matter. Thus, a public official may act on matters of general legislation, and certain home-rule petitions. For example, a legislator, a town manager or a state agency head may draft, promote or oppose general legislation, or legislation related to a municipal government's organization, powers, duties, finances or property. Matters involving other types of "special legislation," regulations or administrative policies are not eligible for this exemption. For a determination as to whether a bill is "general legislation" or "special legislation," contact the city solicitor, town counsel, agency counsel or the Legal Division of the State Ethics Commission.

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