

Memorandum

to: Community Preservation Committee
from: Newton Conservators and Newton Conservation Commission
date: February 13, 2003
re: Elgin Street application for funding

This is to inform you of an amendment to the proposal for funding for the acquisition of the Wilmerding property at the end of Elgin Street.

As Gayle Smalley informed the Committee, the City of Newton is subject to a state regulation that prevents the City from paying more than 125% of the assessed value of a property when making an acquisition. (The regulation apparently applies only to ordinary purchases and does not apply to eminent domain acquisitions.) Because 125% of the assessed value of the Wilmerding land is less than the \$235,000 acquisition price, the purchase could not proceed as proposed.

We sought various means to make the acquisition, including a “friendly” eminent domain purchase. That was unacceptable to the seller, because it resulted in unfavorable tax consequences. The change that we have agreed to is to make an acquisition of a conservation restriction rather than the fee simple title. The City of Newton (as well as the Conservators) will hold a conservation restriction and will gain an option to purchase the fee simple title for a period of () years, for \$1.00, so that, if a proposal before the legislature changes the law, the city can proceed with the acquisition as originally planned.

The loss to the land owner is the same as in the original proposal. The conservation restriction prohibits all effective use of the property by the land owner, with the exception of vista pruning. The gain to the City is the same as in the original proposal. The City gains protection of the land as open space and can take title through the exercise of the option (once enabled by the legislature). This amendment arises out of necessity on the part of the City rather than the land owner. The acquisition price and all other terms of the purchase option remain the same. Our request for funding remains the same.

We (the Conservators) have funded the appraisal of this property for the Community Preservation Committee. We understand that the appraisal has been completed. Our deadline for exercise of the option (the date when we notify the land owner that we will make the acquisition) is in late March. We request that the CPC take action on this application as soon as possible so that, if the action is favorable, it can go on to the Aldermen and be approved before the expiration of the option.