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Community Preservation Committee

MINUTES

October 13, 2020

The virtual meeting was held online on Tuesday, October 13, 2020 beginning at 7:00 pm. Community Preservation Committee (CPC) members present included Mark Armstrong, Dan Brody, Eliza Datta, Byron Dunker, Rick Kronish, Susan Lunin, Robert Maloney, Jennifer Molinsky, and Martin Smargiassi. Community Preservation Program Manager Lara Kritzer were also present and served as recorder.

Mr. Armstrong opened the CPC meeting and asked the CPC members to introduce themselves at this time.

Proposals & Projects

Grace Episcopal Tower Restoration Proposal

Mr. Armstrong stated that the CPC would begin by continuing its discussion on the Grace Episcopal Tower Restoration Proposal which began at the September 15 meeting. He noted that the proposal requests \$1,433,000 in Historic Resource funding to stabilize and restore the existing stone tower. Mr. Armstrong stated that he wanted to begin by clarifying the confusion from the start of the last meeting. He explained that in 2018, the Massachusetts Supreme Judicial Court had ruled on a case involving CPA funding for properties owned by an active religious institution, finding that such funding may be in violation of the state's anti-aid amendment and that each grant required careful scrutiny. He went on to explain that the Massachusetts' Anti-Aid Amendment prohibits the use of public money for the purpose of founding, maintaining, or aiding any charitable or religious organization that is not publicly owned. The 2018 case had established a review process for determining when a project can or cannot receive CPA funding. Because the CPC was aware of this case law, the Committee had requested that the Law Department review the Grace Episcopal Tower Restoration project proposal. As a result of this review, the Law Department has advised the Committee that the proposal as submitted was likely to be found to be in violation of the state's Anti-Aid Amendment. Mr. Armstrong explained that this advice had received at the last minute before the September meeting, and that the Committee had not had a chance to review the information before the public hearing.

Mr. Kronish stated that he was not clear on what the CPC was attempting to do at this time. He asked if the Committee was going to evaluate the Law Department opinion, or if the Committee intended to evaluate the project in light of this information. Mr. Armstrong stated that he did not think that this information changed the CPC's mission or duties and that the Committee must continue to review the merits of the project with the Law Department's information used as part of that review. Mr. Kronish stated that he did not think that he had the capacity to review the project and could not see

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beyond the legal information provided. He added that he was not sure what the Committee would be accomplishing by continuing this discussion.

Mr. Brody noted from the City's Law Department that the anti-aid amendment may be an issue, and an opinion from Attorney Ryan McManus of Hemenway and Barnes stating that it would not be an issue. He personally planned to evaluate the project on its merits as he did not have a strong feeling that this will become a legal issue. He stated that he did not think that the fact that the CPC had received an opinion was enough to stop this review.

Ms. Lunin stated that she thought there was a lot of merit to this project. She added that just because there is a chance that there may be a future issue does not outweigh those merits. Mr. Maloney thought that it was for others to decide the legal issues that could possibly be involved in the future and that it was the CPC's duty at this time to review the project on its merits. Ms. Molinsky stated that she had tried to study this issue before the meeting. She had questioned whether amendments to the proposal would address the concerns about the anti-aid amendment issues and wanted a chance to explore this question further.

Mr. Armstrong noted that the Applicants had prepared a presentation to address questions raised at the first meeting and suggested that they move forward with it at this time. Present for the application was Jean Papalia, Leah Gassett, Austin Stewart, and Scott Aquilina. Ms. Gassett and Ms. Papalia presented a history of the church and its historical significance before reviewing the emergency situation of the tower. They explained that the carillon housed in the tower was one of only two human operated chimes in Newton and that there could be no chimes without the stone tower. They reviewed the project's timeline and addressed the questions raised at the last meeting. Their attorney, Ryan McManus, stated that he understood that concerns had been raised about how the anti-aid amendment might impact this project funding. Mr. McManus thought that conducting a legal analysis of the project might not be the best use of the CPC's time and agreed that they should evaluate the project based on its merits and leave any future legal obstacles aside for the time being.

Mr. McManus then reviewed the questions that needed to be addressed for meeting anti-aid amendment questions. The first question was whether the motivating purpose of the funding was to aid a private entity. In the case of the Tower Restoration, he argued that the purpose of the funding was not to aid the church but historic preservation. He thought that this question would only be an issue if the CPC was recommending funding for a reason other than the preservation of an historically significant resource. The second question asked if the grant would have the effect of substantially aiding a private entity. Mr. McManus stated that preserving the tower would cost the congregation at least \$983,000 more than it would cost to remove the tower, and that they would also need to budget \$15,000 annually to maintain the structure in the future once it is stabilized and restored. He stated that the congregation was willing to take on these additional expenses as the stewards of this historic resource but that the results were far from a substantial aid to them. The third question asked whether the grant avoided the risks that prompted the passage of the anti-aid amendment. Mr. McManus explained this question, noting that this project would only complete the historic preservation of an historically significant structure. He asked the Committee to consider what projects could be funded if this project could not. Mr. McManus noted the many cities and towns which had used CPA funding to complete similar projects and had not had any legal challenges. He added that he did not think that this would be an attractive legal case. Mr. McManus explained that

that Caplan v. Acton case that had raised these questions had started with the use of CPA funding to restore stained glass windows with religious imagery.

The Applicants noted how this project benefited Newton as a whole and that historic preservation had been affirmed as being supportive of the public good at the local, state and federal levels. These benefits were seen in the act of preservation itself as well as its economic benefits and how these efforts increased neighborhood pride. They noted the references to the importance of this type of preservation work in state and local planning documents as well before reviewing the costs to the community of not funding this work. It was noted that the Newton Corner neighborhood would lose not only the bells and tower structure, but that its demolition would also result in the permanent loss of an important piece of Newton history. The Applicants reviewed the congregations work for the community and reiterated that the requested funding was only for the historic preservation of the tower, after which the congregation would be responsible for all maintenance expenses. It was noted to be a free-standing structure and the direct benefits to the community of preserving it were also reviewed.

The Applicants noted that Grace Episcopal Church had a long record of community involvement, impacts, and connections. The parish and its members were tied to the creation and restoration of Farlow Park, the Cottage Hospital (now Newton Wellesley Hospital), and the Newton Children's Library. The community supported numerous non-profit organizations including renting their former rectory to Riverside Community Care, creating a new lot on their property to construct a group home for TILL (Towards Independent Living and Learning), and serving as a polling location. The congregation wanted to continue these partnerships and enhance its connections to the City.

Ms. Gassett went on to review the congregation's revenues and their phased plan for the restoration. She explained that they would be launching a capital campaign for the emergency tower restoration work before the end of 2020. They had interviewed 70 members of the congregation to get a sense of what they could expect to raise and had determined that they could reach \$983,000 over three years. She added that they had seen increased levels of interest in the project since the CPA discussion had started. They planned to apply to the Massachusetts Historical Commission for emergency funding as well. They had also learned that they would not be receiving Sacred Places funding this year but were optimistic that they would receive it next year. Ms. Gassett explained that they have gap funding available and that they would start their public funding campaign as soon as they knew the CPA funding decision.

Mr. Aquilina explained that the maintenance budget for the property was \$96,000 per year on average. The congregation planned to set aside \$15,000 annually specifically to the tower in the future to demonstrate their commitment to its maintenance and preservation. They planned to create a reserve budget for repointing and restoring the tower in the future and were developing 25- and 50-year plans for the structure. The 1999 preservation restriction requires the congregation to preserve all exterior elements of the buildings unless there is a public emergency that requires demolition or alteration, and they felt a responsibility to preserve the neighborhood and historic district for future residents.

The Applicants noted that they had reached out to Mayor Fuller about the project but that she had declined to meet with them. They also provided an updated petition supporting the project with over

600 signatures on it. The project had received letters of support from Historic Newton, the Massachusetts Historical Commission, the Newton Historical Commission, the Friends of Farlow Park, and other community partners as well as other comments of support. The Applicants stressed that they were looking to partner with the City on this project and that the congregation was not in the historic preservation business. They felt that the Grace Episcopal Church Tower is an historic landmark worthy of preservation and noted that the pre-1907 Historic Resource Survey had rated the building as being of highest significance. The tower could be freely viewed and enjoyed by everyone. The Applicants noted that CPA funding had been used to restore Farlow Park and felt that this project was a natural next step and a further opportunity for the City. They reiterated that the funding would only be used to restore the tower, which could not continue to exist without help from the City through its CPA funds.

Mr. Armstrong opened the discussion to the CPC. He thought that the Applicants had made the argument for the architectural and historical significance of the structure. He thought that it was a beautiful, historically significant element of the building which should be preserved. Ms. Molinsky stated that she would like to make this funding work. She did not personally see the tower as a religious icon but did think that the funding requested was a significant financial amount in any sense. She noted that most CPA funded historic resource projects were below \$400,000 but noted that these projects were also much smaller and thought that this was a significant amount to request for a private property. Ms. Molinsky stated that she would like to know about other options that had been investigated to stabilize the structure which may not have worked out. She also asked the Applicants if they had had an independent assessment of the amount of funding needed for the project, and whether there were any indications of support for the project City-wide.

Mr. Aquilina first addressed the cost of the construction. He explained that he was an architect with 30 years of experience working on historic structures, and that another preservation architect, Larry Bauer, had also worked closely on the project. They had received three estimates for the project from firms which all had a clear understanding of what needed to be done after making multiple visits to the site. These estimates were then sent to Shawmut Construction, which conducted an independent review of the estimates which allowed the congregation to feel comfortable that they had a clear understanding of the costs. Ms. Molinsky asked if there were any alternative engineering plans for the project. Mr. Aquilina stated that they had had the tower looked at by Simpson, Gumpertz and Heger in 2009-2010 and provide suggestions at that time. That review had suggested a more traditional and expensive solution than the one currently proposed. J. Wathne from Structures North was a very skilled engineer which specialized in unusual structures and they felt comfortable with both the proposed solution and its anticipated cost.

Mr. Aquilina agreed that the requested amount was a substantial request but noted that there were applicants in the past that had received more funding than this over the course of numerous separate requests. The current proposal was based on what was needed to restore the tower. He noted that the City had put over \$1.7 million into the Durant Kenrick Homestead, that the Allen House had received over \$2 million overall, and that numerous funding allocations had been made to the Jackson Homestead as well. He agreed that this was a large request but was not sure that it was as much of an outlier as Ms. Molinsky suggested.

Mr. McManus stated that the amount could matter in some legal cases but thought that the unique circumstances of this project made that question irrelevant. Not funding this project would not be saving the congregation funding that could otherwise be used for religious programs. Further, this funding was not an issue because the result of the CPA funding would be an increase in the congregation's commitment to preservation, an undertaking which will add additional expenses and not savings for their budget in the future.

Ms. Gassett also agreed that this was a large amount to request but explained that the catastrophic failure of the tower's interior structure could not be spread out over time. The project had a lot of support from outside of the neighborhood as shown in the petition. Ms. Gassett added that she thought the project would be more attractive to other funding programs once it had the CPA funding commitment behind it. She noted that they were not an historic preservation organization but that they were working to make connections and wanted to build a stronger bond with the City. Mr. Aquilina agreed and thought that their project would also get more from the Massachusetts Historical Commission as well, hopefully \$50,000 in Emergency funding and \$100,000 in MPPF grant funding. They had looked into Save America's Treasures and the National Trust but neither program had funding at this time. In short, the CPA funding was all that was available at this time.

It was noted that Historic Resource projects would total below \$1.5 million if this project was funded in addition to the Jackson Homestead and Durant Kenrick proposals which would be reviewed in November. It was suggested that the funding for this project could come out of the Historic Resource restricted reserve account, which is currently at \$1.2 million, with additional funding of less than \$300,000 from unrestricted funds or future Historic Resource Reserves. It was also noted that all other known historic preservation projects were City projects, and that the request was in scale with the resource involved. Some members suggested that with this in mind, the project was not overly burdensome. Ms. Molinsky asked about other Historic Resource Projects. Ms. Kritzer reviewed a spreadsheet showing Historic Resource funding in recent years and noted that Historic Resource funding over the life of the program was at 17%.

Mr. Maloney stated that he did not think that it was up to the Committee to determine whether the project passed legal muster. He agreed with the Applicants that the project was not necessarily for a private entity or benefit. He thought that this was the kind of iconic building which gave the municipality its identity and exactly the kind of project which the CPC should be seeing. He thought that these buildings should be preserved and that there were not enough of these projects in the City. Mr. Brody also thought that this was a great project and agreed with Mr. Maloney. He stated that he was persuaded by Mr. McManus that funding might not be challenged. He also noted that the CPC was well below its goal of 20% funding for Historic Preservation projects. He agreed that the request was for a lot of money but that these types of projects often come in large chunks.

Members reviewed the Historic Resource Reserve funds and noted that there was currently \$1,233,270 set aside in that account. Mr. Armstrong suggested that the project be funded only from the Historic Resource Reserve funds. Mr. Brody disagreed, noting that the CPC had set a City goal of 20% of all CPA funding for Historic Resources which included using some general funding towards that goal. He noted that unrestricted funds were used for projects in other categories and thought that those funds would be appropriate here as well.

Mr. Kronish stated that he saw this project in a different way. He felt that the legal opinion could not be dismissed and stated that he could see no way around it. He felt that the Law Department's opinion needed to be a deciding factor for this project. Mr. Smargiassi stated that as the Historic Preservation representative, he was very much in favor of preserving the tower. However, he did think that the funding was too heavily weighted towards City funding. He was concerned that 50% was too high an amount and wondered if loans were a possibility. Ms. Gassett stated that they had considered loans as a funding mechanism but were not willing to jeopardize the future of their congregation for one. They could manage a short-term loan for this work but not a long term one. Mr. Smargiassi stated that he was familiar with these financing issues and reiterated that he would like to see the tower preserved but was concerned with the amount of funding requested.

Mr. Dunker stated that as the Parks and Recreation Commission Representative, he was aware of how many City projects were out there that needed funding. He was concerned with spending such a large percentage of the funding available on one project. He was also not sure about the public support for this project and thought that there would also be public concerns with the amount of the request. Mr. Aquilina noted that the majority of the CPA funding had been suggested to come out of the Historic Resource Reserve fund and that only \$300,000 or so would come out of the general fund that could be used for other categories.

Ms. Datta thought that the Applicant had made a compelling case and agreed that there needed to be a balance to the funding. She noted that there was room in the historic resource budget to consider this type of project and that a project with a 50% match was within the parameters of the Community Preservation Plan. She had confidence that a vote of support from the City for this project would also lead to support from other funding entities.

Mr. Maloney moved to recommend that \$1,433,000 be allocated to the Grace Episcopal Church Tower Restoration project for the restoration and stabilization of the stone tower to be expended according to the schedule presented at this meeting. Ms. Lunin seconded the motion.

Ms. Molinsky asked if it would be possible to use only the Historic Resource Reserve funds for this project. Ms. Kritzer answered yes that the funding could come entirely from the Historic Resource Reserves by using the current funding amount and FY22 Historic Resource funds as needed. Ms. Molinsky asked if anyone had pause over the funding amount. Mr. Armstrong stated that based on his experience, he did not think that this would be the final cost of the project as unexpected issues often came up during construction. He thought that the total amount could change and that the Applicants could come back, at which time the Committee could decide whether or not additional funding was appropriate. Architect Larry Bauer noted that the project would need to be publicly bid to meet City and State procurements requirements. Ms. Gassett stated that they were coming at this project from the perspective of their partnership with the community. She also thought that the City's partnership on this project would help them to leverage additional funding and was open to continuing this conversation with the community once more information on their funding sources was known.

Mr. Armstrong called for the motion to be voted on by roll call vote. The motion passed by a vote of six to two (Dunker, Kronish) with Mr. Smargiassi abstaining from the vote as he had not been present at the public hearing.

Burying Grounds Project - Request to Modify the Approved Use of Funds

Historic Newton Executive Director Lisa Dady was present to discuss her request to use the \$76,108 currently set aside for work in the three historic burying grounds to replace fencing and stone walls surrounding the South Burying Ground on Winchester Street. Ms. Dady explained that the funding was allocated over several projects going back to 2003 and was intended to fund restoration work in the burying grounds including gravestone work, tree removal, fencing, and masonry work. Over the course of time, they had served as a steward for these properties and had managed to complete much of the work below budget, in one case using a \$50,000 award from the Mass. Historical Commission to reduce the amount of CPA funding needed for the project.

Ms. Dady explained that the South Burying Ground fencing was in bad condition and that they would like to use the remaining project funding for this purpose. The fence work was planned in four phases. The existing funding would be used to complete Phase I (northern boundary) and possibly part of Phase II (east boundary) where the damage most impacted the public. Ms. Dady showed images of the fencing and explained that parts of the fencing on the north side of the property was already falling down. Gravestones were located within inches of the boundary in this location and were in danger from the fence and built-up debris in this area. They proposed to shore up the grade in this area, including installing/repairing mortared fieldstone walls in this area, and install a new chain link fence along the north boundary. She explained that they had included \$9,000 in the budget for a survey of the property but that this was a worst case figure, as there was now the possibility that the City could take care of some of this work depending on the adjacent road work project. When the project had initially been planned, the survey work was supposed to be done by an outside contractor in October-November. The project planned to use Steelco Fencing, an existing City contractor, to replace the fence and had a solid quote for that work which had been submitted for the Committee's review. Ms. Dady reiterated that the work needed to be done soon both for the safety of the public using the road along the north boundary and the protection of the gravestones adjacent to the fence.

Mr. Armstrong stated that he was familiar with the South Burying Ground and agreed that new fencing was badly needed. He asked if a concurrent project was planned along Needham Street. Ms. Dady answered yes, but that the work underway there was a separate project and that the Burying Ground just happened to be located at the far end of the work area. Mr. Armstrong asked if there were any issues with curbing along the north property line. Ms. Dady explained that private property ran along the north property line and that there was no curbing there. If there was enough funding to begin Phase II, then they would begin replacing the fencing along the east, Winchester Street, side of the property.

Mr. Armstrong asked about the status of the survey. Ms. Dady answered that it was planned to be completed soon. She noted that the City's Burying Ground Committee was working on the design and locations for the new fencing. The project would be managed by Historic Newton and the Parks, Recreation and Culture Departments. She added that they were also working landscape architect Sarah Kish on the project. Mr. Smargiassi asked what type of fencing was proposed. Ms. Dady stated that a 4' tall chain link fence would be installed on the north boundary and a more formal steel picket fence was under consideration to run along the sidewalk on the east boundary.

Members agreed that this was a logical use of the remaining funds. Mr. Kronish moved to approve the use of the funding remaining in the Historic Burying Grounds Project accounts to replace the fencing on the north and east sides of the South Burying Ground as submitted. Mr. Maloney seconded the motion which passed by a unanimous roll call vote.

OTHER BUSINESS

Review of Finances and Approval of Revised Budget

Ms. Kritzer presented an updated CPA budget sheet with revised estimates for FY21 funding based on the newly received CP-1 funding and updated estimates on the State Funding Match. Ms. Kritzer explained that the current match was estimated to be 17.7%, which was below the 20% match used in the approved budget. Members reviewed how this percentage change impacted its annual budget. Ms. Kritzer noted that this also reduced the required 10% reserve, but that the Committee could choose to continue to set aside the original higher amount as well. Members agreed to revise the budget with the lower budget reserve totals. Ms. Lunin moved to approve the revised budget as presented. Ms. Datta seconded the motion which passed unanimously by roll call vote.

Approval of August and September Minutes

Members had reviewed the August and September minutes prior to the meeting and had no changes at this time. Mr. Armstrong moved to approve both sets of minutes as submitted. Mr. Maloney seconded the motion. Ms. Datta abstained from voting on both sets of minutes. The August minutes were approved by a vote of 8 to 0 and the September minutes were approved 7 to 0 with Mr. Smargiassi also abstaining.

Other Business

There was no other business at this time. Mr. Kronish moved to adjourn the meeting. Ms. Lunin seconded the motion and all voted in favor.

The meeting was adjourned at 8:35 P.M.