

Date: April 28, 2009

From: Richard Pizzi, Jr., Chairman
Community Preservation Committee (CPC)

Cc: William W. Durkee Jr.
CPA Program Manager

Subject: Minutes of April 28, 2009 CPC/CPA Public Meeting and Hearing

A. Called to Order 7:00PM – The Program Manager called the Meeting to Order. He noted the presence of a quorum but the absence of Chairman Pizzi and requested a Motion to Elect a Chairman pro-tem to go forward with the meeting. The Motion was made by Joseph Salvo, second by Scott Hovsepian, and passed unanimously. A Motion was made by Joseph Salvo to nominate Joseph Maguire Chairman pro-tem, second by Scott Hovsepian and passed unanimously.

B. Roll Call - Clerk

Present: Joseph Salvo (Clerk of the CPC), Joseph T. Maguire (Chairman pro-tem), Scott Hovsepian, Carl Zinnell (absent), Richard Pizzi, Jr. (absent)

C. Minutes of CPC Meetings.

1. CPC February 24 Public Meeting. A motion was made by Scott Hovsepian, second by Joseph Salvo, to approve the February 24 Minutes, and passed unanimously.

D. New Business

1. Announcements – Chairman. None.

2. Applications

Housing - WATCH – 2 Jackson St. (Reapplication as allowed by the CPC after its vote to rescind its Recommendation, and to allow WATCH to withdraw its Application without prejudice.)

Program Manager Durkee. There was a language problem. Another aspect of the CPA was learned through Councillor Waddick who read the Act and pointed out a requirement that in order to make an acquisition, the property had to be acquired by the City. Although there are a lot of ways being used under the CPA for acquisition of property to build affordable housing, since WATCH used the word acquisition of the land in its Application as a private organization, its Application was deemed invalid. The CPC, on direction of the Law Department, rescinded the original WATCH Application and gave them leave to withdraw without prejudice, meaning they could come before the CPC any time. WATCH has now filed this new Application revised and updated, with an increased amount of \$400,000. The problematic language has been removed.

Chairman Maguire indicated his review was that the only substantive changes were to the language as suggested by the Law Department and the amount requested.

WATCH Director of Housing Steve LaFerriere. The changes noted by the Program Manager are the essence of the differences. Project costs were updated. The language used was directly from the CPA. The CPC and Law Department can stipulate any uses they want or do not want included. Clearly creation of affordable housing is allowed under the CPA.

Chairman Maguire asked what were the differences in the new and previous amounts requested. Director LaFerriere indicated higher costs occur with the need to take out a loan for acquisition. There were also higher and lower costs due to the time lag of about 1½ years since the original Application was filed. By monitoring the time on the market of affordable housing lotteries a longer time to the purchase and sale appears likely which is an added cost. Such housing is still selling quickly, but financing isn't as available meaning WATCH may have higher carrying costs.

Further, Chairman Maguire asked whether WATCH has mortgages available to qualified buyers. Director LaFerriere pointed out that WATCH holds frequent first time home buyers classes which indicate there are qualified buyers. A pre-qualification of applicants was considered but assuming a construction period of another 1 to 1½ years to availability of these units, currently qualified buyers would probably already have found a home. Chairman Maguire specifically wondered whether there was a bank with funds for these mortgages. Per Director LaFerriere, no specific bank is waiting for these loans, but the WATCH pre-development loan is through LISK (Local Initiative Support Corporation) who it is believed would supply the mortgage loans as well. Chairman Maguire questioned whether these mortgages would also be a trap for unqualified buyers. Per Director LaFerriere, "absolutely not". The banks used by WATCH never participated in the "no money down" loans. There are qualified buyers and banks with legitimate fixed rate 30 year mortgages.

Member Scott Hovsepian asked the Program Manager whether this Application and Recommendation would satisfy the Law Department. Per Manager Durkee, the CPC Recommendation does not go to the Law Department directly from the CPC, but goes through the Long Term Debt Committee (LTDC). The LTDC sent this to the Law Department which noted the language found by Councillor Waddick was the problem. The Law Department may put stipulations in the Agreement with the City, but the language of the Application is entirely acceptable.

A Motion was made by Member Salvo to approve the CPA Recommendation to the Council for the Application of WATCH of April 22, 2009 for the amount of \$400,000, second by Member Hovsepian, and with a roll call requested by the Chairman, passed unanimously.

D. Old Business

1. Historic - Wellington House. Phase I completion, Phase II initiation, and landscaping as propitious during these Phases.

Program Manager Durkee. There were no representatives apparent from either the Building Department or the Waltham Historical Commission (WHC). Mr. Bennett of the WHC was contacted while travelling and was assumed to be attending this meeting. The Building Department is "in stress" and needs the encumbered money to go forward. The CPC did previously tell the Applicants that the FY '09 amount of \$100,000 would be released, and that FY will end June 30. They need the FY '10 \$100,000 as well to continue Phase II. If the Committee wishes, it could grant the final FY'11 \$100,000. The FY 09-10 \$200,000 would allow the electrical and water systems to be completed in calendar 2009, then they would return for the final FY '11 \$100,000. Phase III FY'12 would include \$100,000 for the plan and implementation of the landscape design. Chairman Maguire had pointed out to Mr. Bennett in a prior CPC Meeting that the anticipated trenching and other disturbances of the land for utilities could be done as part of the landscaping. A portion of the FY '12 money could be granted now for pruning and clearing to show off the house. In the absence of the Applicants, Member Hovsepian made the motion to table the request until the Applicants appear, second by Member Salvo, and it passed unanimously.

2. Open Space – Lot#81 Arcadia Ave. Appraisal Received.

Program Manager Durkee. The "substantial" Environmental Site Assessment received in January, and Appraisal received recently for \$100,000 are now in hand. The Applicant paid for both of these services under the auspices of the Mayor's office as a gift to the City.

Applicant Walter Ohnemus. Chairman Maguire asked whether the amount of the Appraisal which is different from the Applicant's request is amenable to which Mr. Ohnemus said yes. In explanation, although he originally requested only \$100,000, other Applicants were seeking the assessed value for CPC acquisitions and he therefore amended his Application to that value. About one year ago when he appeared before the CPC he agreed to accept the lesser of the assessed value or the amount of the appraisal, but would not seek any amount over the assessed value. Due to the state of the economy. The licensed Appraisal is probably a better indicator of the current value than the assessed values on record for the near future. His original offer was designed only to recover the amount he paid 12 years ago and the miscellaneous costs since that time. He was impressed with the substance of the Appraisal and is amenable to the amount shown. The Chairman noted that the appraised value is about one half now of the actual value when the Application was filed. A Motion was made by Member Hovsepian, second by Member Salvo, that the amount of \$100,000 be Recommended to the Council for the acquisition of Lot#81 Arcadia Ave., and with a roll call requested by the Chairman, passed unanimously.

3. Prior Recommendations Forwarded to the City Council for its April 27 Meeting.

a. Historic – Paine Estate – Landscape Plan.

Program Manager Durkee. The CPC Recommendation had not been sent to the Council and should have been. This was revealed during the review of the “South Side-Downtown” Applications. It was sent to the Council. After reaching the Mayor’s office for the next Council docket, the Mayor said that she had sent a memo to all Department heads that she will only recommend spending from City funds for City properties for “essential projects”. Any spending for projects which can be deferred will be denied. The Project Manager noted that in the case of this Recommendation, it is a study which might make this project eligible for other grants, and therefore would send it forward.

b. Historic – Martyn Square Fountain.

Program Manager Durkee. This is a City property and fountain. There are new facts which would allow the CPC Recommendation to go forward. But (Councillor) Robert Logan was contacted as the Applicant to notify him of the Mayor’s spending directive. He requested that the project be held until he is able to review the mayor’s directive and its implications for the project.

Chairman Maguire questioned the implication regarding the actions of the CPC as an independent agency versus the Mayor’s directive. Manager Durkee noted the prior understanding that the Mayor’s Departments eventually would have to provide the implementation of any CPC/Council project and future maintenance. Without the Mayor’s support of CPC Recommendations it would be difficult to get any projects done, therefore cooperation is preferable. The Mayor did not direct that any project not be sent to the Council, but only noted her new internal policy. Chairman Maguire acknowledged the Mayor’s control over budgeted spending and capital outlays but that the CPC was different and independent of those controls. Manager Durkee noted that Recommendations have always included agreements to specify which City Departments would implement the CPC/Council Recommendations. It was stated and agreed that the CPC could continue to make its Recommendations and forward them to the Council at its will. Member Hovsepian questioned whether the Mayor’s directive could affect the mandatory spending of the 10% per CPA category. Manager Durkee acknowledged that that could be a problem. Even though statewide 2/3-3/4 of CPA funds are spent on municipal projects, it is within the City of Waltham projects where cooperation is required between the CPC, the Administration’s Departments, and the Council for a project to succeed.

4. Status of Round 4 Recommendations (Sent to the City Council for its March 23 Meeting, subsequently referred to the Long term Debt Committee [LTDC] for its April 6 Meeting.)

a. Historic – St. Mary’s Rectory – Windows Restoration. No action taken. Per the Chairman, these items are for information only. Program Manager Durkee agreed and stated these were included as updates as there have been two meetings of the LTDC since the previous CPC Meeting. Mrs. Palme from St. Mary’s was in attendance this evening as they saw the item on the CPC Agenda. The status is that no action was taken for this project Recommendation to the best of knowledge.

b. With instruction from the Chairman, with intent to avoid repetition, the items on the agenda were condensed. In regard to the Waltham Housing Authority (WHA) three Recommendations, Councillor Tarallo did make a Motion for approval which passed and these will be sent to the Council.

5. Status of Other Recommendations (Sent to the City Council and referred to the LTDC, acted on at its April 21 Meeting. The CPC Program Manager was invited to attend for Gore Place and CRMII Extension discussions.)

Member Hovsepien questioned the Program Manager as to the reasons why CPC Recommendations are being delayed in that Committee. Per the Program Manager, the list of the items in this section are indicative of the problems of both the CPC and the LTDC. The WHA "slate roof" project was sent to the Law Department and returned, then Councillor Tarallo pulled it out and included it in his Motion for approval as previously stated. It was then sent for "engrossment" to the Law Department. For the Gore Place, the Program Manager was asked to attend the last Meeting along with Pat Azadi of the Law Department. It is confusing as there are three Committees meeting with the same people on some of the same Committees. In short, Pat Azadi was heard and the Program Manager was not. The Manager expected to present the testimony which was provided tonight to the CPC as well as other information which apparently was never sent to her before the Meeting but had been sent to the LTDC. In the case of the Recommendation for extension of the time to spend for the CRMII there was a long debate over the extensions. At one point the Chairman, Councillor Thomas Stanley asked Pat Azadi legal services could be provided for the CPC. She offered two ways to accomplish this. The first was to hire a lawyer to work for both the Law Department and the CPC. The second was to have a lawyer work for the CPC alone and pay them "billable hours". The Chairman replied that these were unacceptable and could not be done. Although unresolved, it is the Program Manager's understanding that the Law Department is in favor of getting legal assistance for the CPC. There will be a meeting with the Clerk of the LTDC April 29 to review the testimony presented and the questions raised on April 29 as the Program Manager was not asked to testify at the LTDC Meeting April 21. There is a possibility that this can lead to a solution to the problems of both the CPC and LTDC. One problem is that the Law Department treats an inquiry to them as a private matter of either Committee, therefore neither Committee gets the information disseminated to the inquirer. For the questions the Law Department may have of CPC matters, the LTDC sends the inquiries to the Program Manager and the Manager's replies are returned to the LTDC. For the example of the Gore Place, Pat Azadi apparently had neither the information sent to the LTDC and never received the information intended to be presented that evening. The new testimony was given to the LTDC Clerk after the Meeting. It is difficult to resolve an issue where only one side is heard. The LTDC appears to be very frustrated. It is hoped the process can be improved before another Meeting of either committee.

6. South Side – Downtown CPA Projects.

Program Manager Durkee. A list and status report was distributed to the members in their meeting packets. Two items are scheduled to expire in terms of their "time to spend" during 2009. The Assistant City Solicitor did say that there was a process which would allow each project to be addressed for extension individually instead of collectively as had been attempted. No description of that process was provided. A motion needed for future extensions will be requested from the Law Department. Since the Law Department will not give an opinion without receiving it in writing, it could not be done for this meeting.

Chairman Maguire asked whether the Program Manager had requested the process allowed for CPC spending for administrative funds. At least two efforts have been made to do that. Legal assistance in preparing Recommendations would help the Council to receive them in good order. Further, the Chairman recollected that a statement was made that the Law Department had a priority of response to the Mayor, the Council, and then Departments, with the CPC is left without legal assistance when the Council is a "client" of the Law Department. With legal and other assistance the CPC could correctly carry out the mandate of the CPA. Program Manager Durkee noted that one of the ideas offered by the Assistant City Solicitor was that the way other cities provided legal assistance to their CPC's might provide a model for Waltham. It was suggested that Councillor Waddick, who has provided information regarding the CPC, might be able to say how Newton resolved that dilemma. A third party said that Councillor Waddick had returned with the information which said that Newton hires assistance for their CPC work. Also without confirmation, it has been said that the Mayor would refile the request the Mayor made to the Council for \$12,000 for legal assistance for CPA work which was not approved for FY '09. The Newton model is exactly what the CPC has requested in the past. A legal person working within or for the Law Department doing CPA work should resolve the majority of issues. Therefore there is hope these issues will be resolved. Per the Chairman, a reasonable person would conclude that certain parties are trying to "nullify the CPA". It is understood that the vote to establish the CPA in Waltham was narrowly accepted, but since it was passed, it is a law of the Commonwealth and by oath is supposed to be followed by all elected officials. Program Manager Durkee hoped that all parties were working in good faith but the lack of legal and planning assistance has thwarted the efforts of the CPC. If the model was that of a small business it would not be conducted in this fashion. The proper assistance would be paid for, and less frustration would follow.

The North Waltham – Open Space projects would be collected and updated next with the CPC concurrence. The Chairman asked whether he read a quote in the newspaper to the effect that the CPC should "slow down". Does that mean that all of the North Waltham Open Space Applications such as the Hardy Pond Association work should now be delayed or stopped? Per Program Manager Durkee, some of those projects which have or will expire in the time to spend will need to have new Applications or get extensions. The Chairman confirmed that the Applicants had come before the CPC "in good faith" and should not have to

wait by a “slow down”. Program Manager Durkee pointed out that some Applicants, such as Mr. Ohnemus remarked earlier in the evening, have already waited for over one year. The delay is a common complaint and some delays should be able to be expedited. An example is the use of “time certain” time to spend conditions in the CPC grants which can be replaced by “reports” and the ability of the CPC to demand return of funds if satisfactory progress is not shown in the reports. The Paine Estate provides a good example of how applications provide a model for future successful applications of the same nature rather than to seek extensions.

F. Announcements (CPA Manager)

Hardy Pond Association Newsletter. A very favorable story was published regarding the work of the CPC in the acquisition of Parcel B of Lot 1.

G. Correspondence. (CPA Manager)

Waltham Embassy Park. A request was made to determine whether CPA funds could be used to develop a design for renewal of the Park, and to fund a prize for an architectural contest for that purpose. No language within the CPA was found which would allow such a Recommendation.

H. For the Good of the Committee. None.

I. Adjourn. The Motion to adjourn was made by Member Hovsepian, second by Member Salvo, and passed unanimously about 8:30 PM.

Joseph T. Maguire, Chairman pro-tem
For the Community Preservation Committee