

Date: May 19, 2009

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

Cc: William W. Durkee Jr.
CPA Program Manager

Subject: Minutes of May 19, 2009 CPC/CPA Public Meeting

A. Called to Order 7:30PM – The Program Manager noted the presence of a quorum but the absence of Chairman Pizzi. He requested the Clerk call the meeting to order and elect a Chairman pro-tem. Clerk Joseph Salvo called the meeting to Order and made a Motion to Elect Joseph Maguire Chairman pro-tem. The Motion was second by Scott Hovsepian, and passed unanimously.

B. Roll Call - Clerk

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

C. Minutes of CPC Meetings.

1. CPC April 28, 2009 Public Meeting. A motion was made by Joseph Salvo, second by Carl Zinnell, to approve the April 28 Minutes, and passed unanimously.

D. New Business

1. Announcements – Chairman. None.

2. CPC/Council process for Recommendations.

A copy of a Memo to the Law Department with the Subject: CPA Request for Legal Determination of the Engrossment Process for CPA Recommendations was included in the CPC Meeting packets. This request was sent to the Law Department seeking a better process for both the CPC and the City Council to get approval of the CPC Recommendations without having them bounce back and forth between the two bodies without resolution. The idea is to seek a means of hearing both sides of the questions instead of having the Law Department represent only the Council leaving the CPC without representation, and the Long Term Debt Committee (LTDC) very frustrated. We are waiting for a response.

E. Old Business.

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

Arthur Bennett representing the Waltham Historical Commission (WHC) appeared to represent the Applicants for the request to release funds encumbered by the CPC. Robert Como appeared to represent the Building Department and as overseer of the work done on the Wellington House. Mr. Bennett presented the request as a continuation of the

original Application and CPC Recommendation for \$100,000/year and \$100,000 for landscaping. The FY 2008 funds were used on the first phase. Since the first phase work was underway, FY 2009 funds were not requested until now as it was thought the interest would be gained for other CPA work until needed. The FY 2009, 2010 and 2011 funds are now needed and some of the FY 2012 landscaping funds. The House is being obscured with excessive growths. From the Wellington House architects book previously provided to the CPC, the funds for Phase two and three were compiled into the list provided to the Committee today (attached). All of the funds are estimates of local and other contractor bids. The design and professional fees are about 15%. The total cost estimate is \$300,000. It is expected the architects estimates may be higher than will be needed as the state of the economy and local firms would be expected to reduce the costs somewhat. Bids will be needed for these expenditures. The WHC and Building Department will oversee the project without additional costs for that purpose.

Chairman Maguire sought clarification of the HVAC portion to which Mr. Bennett noted every detail and would result in a turnkey completed structure. Per the Chairman, the gap between "what history left us" and the final concept is the question. Per Mr. Bennett the final layout and specific wall locations are known. Per Mr. Como, architects are required for all requests for proposal over \$100,000 which this is, and do cost 15-20%. Phase two is only intended to bring the building to a "wrapped and secure" condition with heat to prevent deterioration of the wood that has been or will be installed, such as for the hardwood floors. By Code, all the wiring must be replaced, including underground service from the utility pole to the house, the electrical box, and all internal wiring. The exterior has been done along with minor wood work such as the windows. The few final designs under consideration do have options as to the utilities. The work is approved by the WHC and the cost estimates are current.

Per member Salvo, questions were asked as to who will make the final design decision and when? Per Mr. Bennett the decision will be made by the WHC, Mayor and Council and possibly the School Committee as to educational aspects. The Trapelo Road area was agricultural until the 20th century and is another side of the downtown Industrial Revolution mill story. The prominent, high style House is one of the few houses from the 18th century which exist in Waltham. The Historical Society could use the house as a headquarters, with small offices, a genealogical library and hold small group meetings there. There is also a larger adjoining City open space. The "square" of the House is original and only a few walls placed between the bedrooms for a bathroom later. Per Mr. Como the small changes would not affect the final restoration costs nor delay the project. Per Mr. Bennett, the pace of construction has been slow to avoid making mistakes. The personnel doing the research, design and architects are highly qualified to do historical work. The historical paint colors from two hundred years ago were determined. Per Mr. Como, the purposeful use of phases in the project allows each step to be completed prior to the next one, but keeps options open until completed, and avoids undoing errors. This phase is "harmless" as to the final usages.

The Chairman urged the Applicants to attend the LTDC Meeting when the project arrives for a hearing as "nothing seems to happen" there, and substantial lobbying may be

needed. Despite the past expenditure, if it is "allowed to lie fallow" without heat deterioration will begin immediately. Mr. Bennett agreed that unless there was heat in the House prior to next winter, paint will begin to peel, windows will deteriorate, and moisture will be a problem. The Applicants will bring information to the LTDC regarding the past expenditures, the sources of the funds, and show that the requested funds will allow the work of past expenditures to be preserved.

Hearing no further questions from the COC, a motion was requested. The question arose whether the funds were already approved by the Council, and clarified by the Chairman that the funds were encumbered by the CPC but would need Council approval to be appropriated. The Motion was made by Carl Zinnell that the amount of \$300,000 be approved by the CPC to the Council for the purposes of restoring the Wellington House, second by Joseph Salvo, and passed unanimously.

Program Manager Durkee pointed out that the expert testimony of Mr. Como was well presented. Further that the City Budget proposal includes the removal of Mr. Como's position and that his services as Clerk of the Works for the Wellington House may be needed. Chairman Maguire concurred with the hope that the situation would be temporary.

2. Recommendations Forwarded to the City Council Long Term Debt Committee [LTDC] for its May 4 Meeting

- a. Historic - Paine Estate – Landscape Plan (Tabled).
- b. Historic - St. Mary's Rectory – Windows Restoration.
(Filed, without prejudice).
- c. Historic - St. Charles Church – Exterior Restoration.
(Filed, without prejudice).

Per Chairman Maguire, these Recommendations are before the LTDC. Program Manger Durkee indicted all three items were informational only. All three items have a history of delay and have gone through the LTDC. As of today, information concerning the two church items was received and the next step will be to forward them to the Law Department for a Recommendation which would satisfy the Law Department and the CPC. This is an effort to avoid the "ping pong ball" game of sending our Recommendations to the Council where they then become part of a Council "client relationship" with the Law Department without input from the CPC.

3. Recommendations Forwarded to the City Council for its May 11 Meeting, then forwarded to the **Finance** Committee for its May 18 Meeting

- a. Open Space – 81 Arcadia Ave. Recommendation update.
- b. Housing - WATCH - 2 Jackson St. Revised Recommendation update.

Per Program Manger Durkee, the past evening, both Applicants joined him at the Meeting of the Finance Committee where the arrival of the two Recommendations was "too confusing". As the President of the Council was in attendance, the Committee asked why the Recommendations were sent to the Finance Committee instead of the LTDC. His

response was that these projects had a "time urgency". The Applications started in 2007, the land owners want to sell the properties, the purposes are to acquire the land of the first Applicant and to assist WATCH to build the condominiums on Jackson St., and those urgencies were the reason they were sent to the Finance Committee. Although three of the members of the two Committees are on both of them, they asked to have these Recommendations returned to the Council and subsequently sent to the LTDC.

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, now under Law Department Review.)

a. Housing - Waltham Housing Authority – Boilers – 75-85 Myrtle St., 22 Lowell St., 101 Prospect St. Referred to the Law Department for review and engrossment of an appropriation.

b. Housing - Waltham Housing Authority – Boilers & Windows - 37 Banks St. Referred to the Law Department for review and engrossment of an appropriation.

Per the Program Manager, the information regarding item 1. in the following paragraph #5.a. Newhall School historic roof would be included in his comments now. Last week the Waltham Housing Authority (WHA) requested an update as some are urgently needed. The 37 Banks St. Recommendation was returned from the Law Department today. It was a five page list of items instead of a simple engrossment or Recommendation. Therefore it will require going through the list, returning the answers to the Law Department, and asking for a Recommendation. A quick look appeared to be speculative in nature and could have been resolved easily with a telephone call or meeting with the Law Department outside this so called "client relationship". This confirms the idea of having a different process for engrossment of CPC Recommendations discussed earlier.

The other three Recommendations have not been returned to the CPC yet.

5. Status of Other Recommendations (Sent to the City Council and referred to the LTDC, acted on at its April 21 Meeting.)

a. Housing & Historic - Waltham Housing Authority – 101 Prospect St. (Historic Newhall School & Winchester Crane Apartments). Referred to the Law Department for review and engrossment of an appropriation (see above).

b. Historic - Gore Place – Fire Suppression. On May 1 a request for a legal version of a Recommendation to be prepared and a meeting held with the Law Department was sent to the Law Department. Assistant City Solicitor Pat Azadi, was assigned to answer the request.

c. Historic - Charles River Museum of Industry and Innovation CRMII – Extension of Time to spend. On May 1 a request for a legal version of a Recommendation to be prepared by the Law Department was sent to the Law Department. Assistant City Solicitor Pat Azadi, was assigned to answer the request.

Per Program Manager Durkee. In both of these cases, the process was to go directly to the Law Department to avoid the "ping pong".

6. South Side – Downtown CPA Projects.

a. 67 Crescent St. During the review of these projects it was apparent that the "time to spend" for 67 Crescent St. had expired. Therefore this Recommendation was sent to the Law Department for an extension of time to spend which would then be sent to the Council.

b. Historic – Martyn Square Fountain (Tabled in the CPC.)

7. North Waltham – Open Space CPA Projects.

Per Program Manager Durkee the list was made for 14 projects in this category in North Waltham for Open Space and Recreation. They have not been examined in detail for their status. The Housing Applications were not included as they appear to be suitable for a separate third category which will be created. The fourteen Applications include four for the Fernald alone as the four permitted categories could apply for the expenditure of the monies Recommended by the CPC. It is also possible for the CPC to set aside funds for the various purposes without a Recommendation. Chairman Maguire asked for the status of each of the fourteen Recommendations to understand what the problems are to complete the projects. As an example of the problems in this group of Recommendations, from the South Side group, the monies were appropriated but the Law Department did not act on the acquisition and the "time to spend" expired. The Chairman noted that the Mayor's Office has to make acquisitions and the CPC needs to work with the Mayor. The "client relationship" does not work. Applicants with "sound ideas" have filed Applications and the Chairman expressed his feeling that the CPC has "let some people down".

8. FY 2010 CPC Budget.

The Chairman asked for the status of the CPC Request. Per the Manager, there has not been a request received from the Finance Committee to appear before them. The Mayor may have made a request to the Council for funds for the CPC for legal purposes, but otherwise the CPC has not sent any request to the Council. It must be done in a timely fashion before the end of the year to avoid the problem in FY 2009 when our Budget was not approved until October. The CPC was asked to decide what we would include in the Budget request, how it would be presented and who would represent the CPC. The Mayor stated that the availability of a lawyer or attorney to do CPA work would eliminate all of the issues that have "befuddled" the CPC, and the LTDC, Finance Committee and the Council which must approve all of the CPC Recommendations. The Mayor noted that the Mayor's Office and the CPC have been denied funds for doing CPA work more than once. The CPC offered to pay for the services of other Departments such as Building, MIS and Planning which do CPA work. It is believed these Departments are now trying to identify the costs of doing CPA work in order to identify them to the Council. The end result is that the CPC and the Manager are not lawyers, and therefore what Mr. Stanley complains about as problems with the CPC Recommendations are due to the fact that the CPC does not have a lawyer nor are lawyers themselves. The CPC is unable to get help as

they are apparently overburdened. Per the Chairman, the CPC is fourth on the priority list of the Law Department and the Council is second. Member Zinnell pointed out that the CPC requests for legal assistance working through the law Department have been denied by the Council. The Manager agreed that the CPC had requested legal assistance two years in a row and more than one time. He said the CPC Coalition has stated that the DOR had approved legal assistance in all of the other CPA municipalities in two ways. In the first, the municipal or independent lawyers charge an agreed fee as "billable hours". Towns also hire lawyers who do the necessary CPA work, and if they are not fully busy with that, can do any other municipal work in the available CPC paid hours. In Waltham, the CPC and the City Law Department would benefit if the Council allowed the expenditure. The Council appears to believe that before the CPC has a lawyer, the Council should have their own lawyer. Therefore Waltham is "rather unique" not having either a CPC lawyer nor being allowed to spend CPA funds for legal assistance. Mr. Waddick was asked as an attorney working in Newton to determine the process there. As understood, the City of Newton does have a lawyer who does CPA work. Per Member Zinnell, the funds would come from the allowed 5% CPC administrative category. The process has been a "merry go round" and there appear to be people who have not read what the CPA is all about. Their actions seem to indicate since they know nothing about the CPA, they are only interested in stopping it. As the CPA is the money of the people, those actions thwart the will of the people. Per the Manager, there do appear to be those who differ whether to spend the CPA funds and where to spend them. As previously reported, the curator of the Paine Estate and the Manager went before the LTDC with the Recommendation to spend funds for landscape planning which would allow them to apply for other fund sources. In this difficult economy, this would require people to do the work and assist in providing jobs to do the work. There is no future impact on the taxpayers as the money has already been collected and is awaiting those projects in which the CPA funds can be expended such as a landscape design plan. However, some Councillors do not believe the CPC should spend any funds even though the funds are now available. Councillor Logan spoke before the LTDC and pointed out that land, such as Lot#81 Arcadia Ave. costs half as much as it did 2 years ago. He pointed out that it may be a good time to spend money for acquisition as land is less expensive than it was and perhaps will be. And, more contractors are available seeking work, raw material costs have dropped, and if you have money now is the best time to spend it for desirable projects. It is likely the cost today will produce double what it did, but that logic failed in the LTDC. The Chairman noted that in his recollection despite the Council Rules which state only two meetings should occur at a time, he thought there were four simultaneous meetings when he was there. The Members of the LTDC were breezing in and out and they never had a full Committee. When they speak, it is apparent they have not read the Act, otherwise they wouldn't say what they do. It appears that there is a legislative act of nullification. If you don't like the law, just don't use it. For an example, the Council president may a ruling that they would file a Recommendation. However, the law states the legislative body, the LTDC, must approve, deny or reduce the amount. There is no provision for tabling. There is no accusation of deliberate nullification, perhaps it is an error. If it is challenged, sometimes it is "deminimus". The disapproval of the St. Mary and St. Charles Recommendations is really nullification. It doesn't get done. They don't read the Act.

Further, the Recommendations sent to the LTDC are suitably written in the Chairman's opinion for action in the Council. The Law Department returns them with a long "lawyerly, scholarly dissertation". Although most of the items can be corrected by amendment, they only disapprove them rather than allow amendments.

The Chairman indicated his desire to send the same budget request to the Council as sent for FY 2009. That would include the money for the attorneys fees, and 35 hour/week for the Manager. These proposals would be from CPA funds, not from the tax levy. Per the Manager, he will prepare a draft of the previous budget and send a copy to the CPC. As a note, the CPC has been frugal and has never come close to spending the Budgeted amount. Therefore even "level funding" as granted for the previous year would be more than sufficient.

F. Announcements (C.P.A. Manager)

a. The Stanley Report. (excerpt from the May 2009 Waltham, Vol. 4, No. 5 attached). As a segue from the last discussion, the first item needs CPC direction to follow our dictate to remain non-political. The Manager received a copy from the State House office of Representative Stanley. It is critical of the actions of the CPC. The Manager stated there would be no comment nor response at this time. Per the Chairman, it was noted that Councillor Representative Mr. Stanley is running for office and "anything can be expected from a candidate".

b. CPC Organization. Per the Manager, all five parent organizations that are required to send a representative to the CPC were notified that existing or new Members need to be reconfirmed annually. Member Salvo and Hovsepian have been reappointed and the other boards need to send the same confirmation.

G. Correspondence (C.P.A. Manager) and Miscellany (included with the Announcements)

H. FOR THE GOOD OF THE COMMITTEE (None)

I. ADJOURN The Motion to adjourn was made by Member Salvo, second by Member Zinnell, and passed unanimously at about 8:45 PM.

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