

1. The meeting was called to order at 5:00 p.m. in the Nauset Room at Town Hall. In attendance; Posy Cameron, Julia Enroth, Jon Fuller, Harry Herrick, Jane Hinckley, Alan McClennen, John Ostman, Cathy Southworth.
2. Public Comment – Erica Parra (Joint Committee on Affordable Housing) – Erica reported that, at the Selectmen's meeting, it was discussed that buying was cheaper than building on 6A. She had a concern with electric heat that most condos have. Julia Enroth stated that a consultant is looking into alternative heating.
3. The minutes of the January 22, 2009 meeting were approved as amended. 7-0-1
4. Project Monitoring – Updates and Expenses
  - a. Cemeteries-Phases I & II (Julia Enroth) – No new information.
  - b. Academy-Phases II & III (Harry Herrick) – No new information.
  - c. Open Space (Alan McClennen) – No new information.
  - d. Eldredge Park (Cathy Southworth) – No new information.
  - e. Town Records (Posy Cameron) – No new information.
  - f. Cummings Photos (Catherine Hertz) – No new information.
  - g. Odd Fellows Phase II (Jon Fuller) – No new information.
  - h. Meeting House Plan (Alan McClennen) – No new information.
  - i. Bikeway (Jon Fuller) – Jon handed out a summary report.
  - j. Sea Call (Jane Hinckley) – No new information.
  - k. Historic Videos (Catherine Hertz) – No new information.
  - l. COA Walkway (Julia Enroth) – No new information.
5. Key Dates / Timeline
  - a. There was a meeting with the Selectmen on January 28 on the Condo Study.
  - b. February 5 – David Withrow (Financials)
  - c. February 12 – Public Hearing
  - d. February 19 – Final Recommendations
6. Old Business – Alan McClennen read a letter regarding the Eleanor Toop Fund. Funds are to be used for the purchase of open space. Open Space Committee will make recommendations and then it would go to the CPC.
7. New Business
  - a. Vocation request has been reduced to \$32,515. A letter was handed out from a potential restorer.
  - b. Odd Fellows revised request.
  - c. Julia Enroth handed out updated Project Application Request and Potential Funds Available.
8. Seideman Case Decision and Eldredge Park Sprinkler System Project (Town Counsel, Town Administrator, Parks and Beaches Superintendent).
  - a. Town Counsel, Michael Ford was asked by CPC Chair, Julia Enroth, to provide a summary on the Seideman v. Newton Case.
    - i. Atty. Ford provided the following summary: The Seideman decision clarified whether CPA funds could be used to improve recreational land that was not originally acquired or created using CPA funds. CPA funds may be used “for the acquisition, creation and preservation of land for recreational use; and for the rehabilitation or restoration of land for recreational use that is acquired or created as provided in this section,” i.e. acquired or created with CPA funds. In Seideman, the SJC found that the “creation” of recreational land did not extend to

establishing new recreational uses on existing parks. The SJC also found that the proposed park projects were not “preservation,” which is defined narrowly in the CPA as protecting property from injury, harm or destruction, but not including maintenance. The Newton project included extensive improvements and upgrades intended to expand and enhance the quality and usage of the parks. The SJC considered the proposed work to be “rehabilitation” under the statute, which includes the remodeling, reconstruction and making of extraordinary repairs” to “lands for recreational use” so they will be “functional for their intended use.” “Rehabilitation” is only permitted where the land was acquired or created with CPA money.

- ii. It is Mr. Ford’s opinion that the Eldredge Park project is not an illegal application. Mr. Ford stated that, in his opinion, the Eldredge Park project is a complete replacement of the irrigation system.
- b. John Kelly, Town Administrator
  - i. Mr. Kelly stated that the Town signed a memorandum agreement with the Orleans Cardinals.
  - ii. No funds from the CPC have been expended, only Town funds.
  - iii. He feels that this application is within preservation.
- c. Paul Fulcher, Parks and Beaches Superintendent
  - i. Mr. Fulcher reported on all the sports teams that use the field.
  - ii. The sprinkler system floods the field.
  - iii. Original system was installed in 1967.
  - iv. Would install a completely new system using well water.
  - v. The reason the project has been on hold is #1 money and #2 need to do the whole infield. There are also safety issues.
  - vi. Alan McClennen asked what kind of injury, harm or destruction has happened over the past five year. Mr. Fulcher stated that there is loss of turf and there is a need to reseed approximately three times a year at a cost of approximately \$1,000 each time. The sprinkler is killing the root system. Harm to the field is increasing.
- d. Mr. Ford stated that if it is a replacement and it is “new,” it is defensible as preservation.
  - i. Mr. Ford explained that, in a 2002 opinion, DOR noted that CPA funds could be spent, *inter alia*, to: Make particular improvements on recreational property owned by the town before adoption of the CPA, or acquired with community preservation or any other municipal funds, for the limited purpose of protecting the property from injury, harm or destruction. This might include such projects as: repair or replacement of a roof to protect a structure from damage from the elements or installation of a sprinkler system to protect it from fire damage. It does not include ordinary maintenance or upkeep of the property, nor improvements intended to enhance or extend its use or life.
  - ii. Atty. Ford further noted that rehabilitation projects are those involving substantial and extraordinary improvements to the property or asset in order to make it functional for its intended use.
  - iii. Atty. Ford stated that CPA funds may be used for this project if the proposed work comes within the definition of “preservation,” which is the protection of property from injury, harm or destruction, but not including maintenance. However, if the proposed work is deemed “rehabilitation,” then it could not be funded with CPA monies, because only those properties acquired or created with fund monies may be rehabilitated or restored using such monies.

- iv. Atty. Ford noted that The CPA Coalition Website lists the following examples of recreation “preservation” projects:
1. Install an irrigation system at a public park to prevent the grass from dying or otherwise being harmed
  2. Install new drainage at an existing athletic field to prevent flooding and water damage
  3. Provide new drainage at an existing athletic field that has severely deteriorated; however, monies cannot be used for routine maintenance or capital improvement for which municipal funding has already been committed.

He further pointed out that the CPA Coalition Website lists the following examples of “rehabilitation and restoration” projects (can only be done on recreational lands acquired using CPA funds):

1. Create recreational opportunities through brownfields rehabilitation and/or redevelopment such as capping a landfill and establishing a new outdoor park, tennis courts or other athletic facilities on site
  2. Restore unused walking trails in forest land acquired with CPA funds to usable condition
  3. Resurface tennis courts created on municipally owned property.
- v. In conclusion, Atty. Ford said: **“It is my understanding that if the irrigation system is not replaced then Eldredge Park could suffer injury, harm or destruction. Accordingly it would appear that this project would come within the definition of preservation. The project would not be considered routine maintenance (such as mowing the lawn, emptying trash barrels or dumpsters, etc.). However, if this project is considered an extraordinary repair then conceivably it would come within the definition of rehabilitation and could not be allowed. Technically, however, the irrigation system is not being repaired, it is being replaced. The CPA Coalition does not include the installation of an irrigation system as an example of a preservation project, however, it does not specify whether this would be limited to a new irrigation system or whether it would also apply to the replacement or an irrigation system. The DOR 2002 legal opinion provides that the “replacement” of a roof to protect the structure from the elements would be preservation. Clearly, the new irrigation system will extend the life of the ballfield, however, it would appear that the replacing of a roof would also extend the life of a structure in the DOR example. Taking into consideration all these factors, it would be my opinion, that if the purpose of the new irrigation system is to protect the property from injury, harm or destruction, then CPA funds may be used to fund the project.”**

*•On a motion made by Jon Fuller and seconded by Jane Hinckley, a motion was made to take no further action on the replacement of the Eldredge Park sprinkler system.*

8-0-0

#### 9. Preliminary Recommendations on Projects

- a. Restoration of Historic Vessel – OHS (\$65,000)
- b. Meeting House Museum Electrical System Upgrade Park 2 – OHS (\$3,770)
- c. Condominium Purchase Program – Joint Committee on Affordable Housing (\$255,000) – Julia Enroth stated that it is possible not to touch the Housing Reserve. Taking \$77,000 from State match, transfer of funds of \$207,000 which would leave \$29,000 to go into Housing Reserve.

- On a motion made by Alan McClennen and seconded by John Ostman, it was agreed to fund the Condominium Purchase Program for \$255,000. 8-0-0
- d. John P. Hinckley, Jr. Affordable Housing Project - Joint Committee on Affordable Housing (reallocate \$398,000, return \$207,000) - Alan McClennen stated that this is the first time CPC would appropriate funds for a private developer to build and manage a project. Alan is concerned that all figures are estimates. He suggested CPC appropriate funds requested and the CPC hold \$100,000 of the funds.
  - On a motion made by Jon Fuller and seconded by Posy Cameron the CPC would reallocate \$398,000 for the John P. Hinckley, Jr. Affordable Housing Project. 8-0-0
- e. Replenish Affordable Housing Trust Fund – Joint Committee on Affordable Housing (\$50,000)
  - On a motion made by Jon Fuller and seconded by John Ostman, it was agreed to fund an amount that would bring the Housing Trust Fund up to a total of \$50,000. 6-2-0 Alan McClennen and Posy Cameron opposed.
- f. Nelson Overlook Restoration – Orleans Conservation Trust (\$15,000)
- g. Senior Center Walkway – Council on Aging (\$60,000)
  - Motion was made by Alan McClennen and seconded by Harry Herrick to make recommendation for Restoration of Historic Vessel, Meeting House Museum Electrical Upgrade, Nelson Overlook Restoration, and Senior Center Walkway as submitted. 8-0-0
- h. Vocation Organ Restoration – OHS (32,515) - Julia Enroth is concerned about the amount the CPC has funded the OHS over the years. It is suggested that the OHS should look into some additional source of funding for this project.
  - On a motion made by Cathy Southworth and seconded by Harry Herrick, a motion was made to fund \$16,000. 7-0-0 (Jon Fuller left at 6:40 p.m.)
- i. Odd Fellows Hall Restoration; Elevator, Clapboard, Windows – Odd Fellows (\$163,614 (\$95,000)) – Received a letter from Odd Fellows to change their request to \$95,000. Alan McClennen stated that the CPC has already funded \$195,000 and suggest funds could be given for a professional preservation architect.
  - On a motion made by Alan McClennen and seconded by Posy Cameron, it was agreed to allocate \$25,000 for a preservation architect and design services. 7-0-0
- j. Committee Expenses
  - On a motion made by Cathy Southworth and seconded by Jane Hinckley \$38,500 would be set aside for committee expenses. 7-0-0

Julia Enroth requested that each liaison write up a summary on each of their projects and email it to her, and also notify them of the hearing and preliminary recommendation dates.

There being no further business, the meeting was adjourned at 6:55 p.m.

Respectfully submitted,

Sandra A. Marai, Secretary  
Community Preservation Committee