

## **Eva Bowen**

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**From:** Susan Mitchell-Hardt  
**Sent:** Wednesday, June 02, 2004 3:53 PM  
**To:** Clerk Department  
**Cc:** Community Preservation Committee; Roland Bartl  
**Subject:** Minutes for CPC Meeting of 5/6, 7:30 pm - 10:30 pm, Town Hall

### **Minutes for CPC Meeting of 5/6, 7:30 pm - 10:30 pm, Town Hall**

Attending: Peter Berry, Walter Foster, Andy Magee, Catherine Coleman, Susan Mitchell-Hardt, Matt Lundberg, Mimi Herington, Erin Bettez

Absent: Peter Grover, Alison Gallagher, Chris Schaffner  
Guest Speakers: Jamie Eldridge, Don Johnson, John Murray

Audience: Nancy Tavernier, John Ryder, Dore Hunter

#### **1. Approval of Minutes, 3/25/04**

The Minutes of 3/25/04 were approved as written.

#### **2. New Business**

##### **Discussion Re: Election of Officers**

Catherine had a question about when officers are appointed. The Bylaw talks about July 1. Walter said it's customary after Town Meeting to elect them - so it's possible to do so sooner than in July. Peter B believes in rotating the chairs.

Andy M. nominated Peter B. as Chair. Peter stated that he would accept a second year, but not a third year.

Catherine will remain Vice Chair unless someone else expresses interest in the position.

Walter stated the Bylaw states that the CPC shall elect the Chair and Clerk at the new year - after Town Meeting. (The chair of the BoS changes after Town Meeting).

Walter also believes in rotating through - in moving things around to let new people have an opportunity to be officers; however, since the CPC is new and hasn't completed a full cycle, he feels it is appropriate if the CPC doesn't rotate through this time.

Peter B. hasn't heard any requests for officer positions. The purpose of this is to get people to think about it. He stated that the natural progression is for the Vice Chair to take over for Chair.

Peter will request that he's appointed another term.

Four people are off this year; two in '05 and three in '06. Chris's term expires from the Planning Board soon.

There are no slots for Associate Members to become full members.

Walter stated that the composition of the board is determined by the Bylaw. We have three at-large members and two associates who are at-large. Susan, Catherine, and Walter were reappointed last year. Their term expires 6/30/06. Housing is a three year appointment; so Erin has two years left. The CPC is

in its second year of appointments. HistCom, ConCom, AHA member appointments are for three years. Their terms expire in 6/30/05.

The CPC will vote on appointments at its first meeting in June.

### **Next Meetings:**

May 27, 7:30 pm

June 10, 7:30 pm

Peter Berry announced he will not be here at our next meeting on May 27.

It was asked if there would be a Town Meeting in the fall - Walter doesn't know yet; Dore would like to see zoning matters in the fall.

### **3. Meeting with Representative Jamie Eldridge**

The Metropolitan Mayors Coalition made a proposal to tap into the state CPA Trust Fund and convinced the MAPC to support their amendments. The Metropolitan Mayors Coalition maintain that the Trust Fund is large enough to warrant directing some funds for public uses for municipalities that have not passed the CPA in their communities.

Jamie spoke against it at an MAPC public hearing where it was proposed. At the House Budget debate he and Cory Atkins worked hard to defeat the amendments.

Jamie passed out a document which showed which Amendments passed at the House Budget Debate. The language on the second page orders DEP to conduct a review of the operation of the CPA. "The Dept. shall solicit testimony re: innovative ways that municipalities might generate local revenue streams that could qualify for matching funds from the CPA Trust Fund." The DEP must report back to the house no later than 3/1/05. It's a recognition that some towns can't pass the CPA - Jamie doesn't believe it. Senator Resor is working to shelve this language for the Senate budget debate.

Andy asked if there were a funding piece. Jamie replied that there is not, and the best way to kill the bill is to give it to an agency with no staff.

Peter B. asked if the speaker was opposed to the amendments to the CPA. Jamie stated that he spoke to the Chair of the House Ways and Means Committee, and that leadership was opposed; only the mayors supported it. At the MAGIC meeting he sensed there was also opposition to the amendments.

Peter asked if Jamie expected amendments from the Senate - he didn't know.

Andy commented that each senator has at least one CPA constituent.

Jamie thanked Susan for tipping him about the MAPC meeting in Boston where he was able to attend long enough to protest the proposed diversion of the CP Trust Fund and to support those towns who went to heroic efforts to pass the CPA.

He felt that sending letters to the MAPC will be helpful. He will speak to their Executive Director, Mark Draisen. Jamie commented that it was annoying and offensive that the MAPC went out on a limb to support the Mayors' Coalition proposed raid on the Trust Fund.

Walter Foster also thanked Jamie and Cory for their efforts and wanted the committee to know that they had come to the Board of Selectmen. He also stated that the Board of Selectmen will sign a letter to the

MAPC. He also recommended sending the MAPC additional emails and letters with complaints and show of outrage. He further recommended signing a letter as a committee and joining with neighboring committees to send letters. He recommended writing those towns and including their Board of Selectmen.

Roland suggested that the most compelling letters would come from the Board of Selectmen.

**ACTION:** It was agreed that the Publicity Subcommittee would write a letter to the Beacon thanking Jamie Eldridge and Cory Atkins for their efforts to defeat the amendments at the House Budget debate which would have resulted in the diversion of the CP Trust Fund.

Peter Berry commented that the proposed raids are a result of the dire budget. He asked if the revenues coming in will take the pressure off the CP Trust Fund. Jamie agreed that revenue is growing, which should help.

Catherine asked if the CPC should alert Jamie to new developments. Jamie commented that keeping him up to date is helpful so that he and Cory will know when to pay more attention.

John Ryder commented that he would be glad to ask the FinCom to sign a letter to the MAPC.

Jamie had some comments re: Affordable Housing initiatives. On Monday the legislature will debate changes to 40B. All towns will be able to create an Affordable Housing Trust Fund without going to the legislature.

John Ryder asked if we can get credit for having high density zoning? Jamie replied that it won't help.

40B will be changed without repealing it. Changes will include double counting Chapter 40B homeowner units, which will be retroactive and mobile homes will be counted.

#### **4. Discussion re: Process for Releasing Funds and Role of CPC: Don Johnson and John Murray**

Don and John stated that the CPC and town staff have worked hard to get the CPA up and running. It has become rapidly apparent since projects have been approved that ground rules for the process for releasing funds need to be related to the applicants and need to be spelled out in the next iteration of the CP Plan.

CPA funds are town money - not a special pot.

John and Don bear the responsibility for whatever happens with public funds. John is the Treasurer, and he signs the checks letting the money go. His job is to be the procurement officer for the Town; it's a statutory position; also the bid laws of the Commonwealth apply. John and Don answer to DOR.

Issues:

##### **- T. J. O'Grady Skateboard Park:**

The Town approved \$67,000. This is a public project on public land; it has had two public appropriations. A Warrant Article appropriated funds two years ago, and there was an appropriation from the CPA. Those funds were sought by an entity that's not the Town.

John asked, - does he give them a check of \$67,000, and they give it back and follow bid laws? - they sought Town Counsel's advice.

**- Family Housing Initiative:**

The Acton Housing Authority has the RFP ready to go. Don and John will let the Acton Housing Authority take the responsibility, but the AHA can't rely on Town Counsel as they are not the Town. (John has a bond).

**- Davis Monument Restoration:**

Don has property responsibility concerning the monument re: the process and hiring the designer. The specs must be put together and it must be bid.

He will go through the HDC - they'll have input.

- Bid it
- Select according to law the lowest qualified bidder
- Monitor the work

Don hadn't suspected that the CPC would want continuing involvement with the CP projects after Town Meeting.

Peter Berry looked at Town Counsel's response re: the **Process for Releasing Funds and Role of CPC:**.

#1 states that the CPC

- "Studies the needs... re: community preservation
- Makes recommendations for CPA fund expenditures
- Keeps records of its recommendations and all appropriations and expenditures"
- The lowest bid out of three must be taken.
- The forms go back to the Board of Selectmen who pass them along to the Treasurer.
- Dean Charter, John Murray, Don Johnson, and Town Counsel sign off.

Peter B. asked if the CPC could also sign off. Don replied that was possible; it would be different.

- The CPC must reinforce the appropriation and see to it that not too much is expended.

Town Counsel suggested that the appropriations at Town Meeting are a Warrant Article. For example, once Town Meeting votes to build a police facility - they hire an architect, choose a design, go through the committee, perform due diligence; the Municipal Properties Officer makes certain it is monitored.

Normally Don enters into contracts with the Town. He would like to issue the contract or go back to the Selectmen and let them know who's selected, etc.

Peter Berry stated that the CPC doesn't want to interfere with the town process; there's a feeling the CPC should know what's happening as they go along.

Andy commented that the CPC put out an RFP, got proposals, negotiated the project; it goes out again - it's looseness on the CPC end that's the problem.

The proposal accepted may be different from the original proposal. The CPC may know things you aren't aware of. This information as well as a number of agreements are in the minutes.

Don/more examples:

If the Acton Housing Authority comes in to the Treasurer with two deed restricted properties for which the AHA put in \$300,000, and they stated they will get \$200,000 from the CPC. He must let the check go. The CPC should get in on the planning process - then the AHA will go back to the body of law they need to apply.

The Library wants an advance. The law can't be violated; there can be no payment until we see the goods and services. The Library doesn't understand that the Town has agreements.

Groups could come back to the CPC before they proceed with the Town.

Andy commented that our first year was short. He is concerned that things could fall through the cracks.

Peter Berry has a check list which the CPC will review for gross errors.

Andy commented that this year will be tighter with our proposals.

Walter agreed that the term was short, and some of our projects changed over time.

For example, re: the Cultural Resource List - the terms changed after the CPC voted on it. Another example is the Skateboard Park. \$90,000 of private money was leveraged. The concept is that the applicant raises their money first and spends it. Andy added that when the CPC can pay for a specific item like the bowl, it's easier.

Misc.:

Roland stated that Town Meeting can appropriate from the current revenues. We have a balance of \$70,000 and \$200,000 set aside. In theory the CPC can appropriate from the funds we're collecting. We won't know the exact number until October when the funds are certified.

Peter Berry The CPC should have a regular deadline for arrival of proposals. The CPC may make exceptions for emergencies. It was stated that funds could be appropriated, but probably not accessed.  
- It was agreed that the CP Plan needs to be updated quickly.

## **5. Review of CP Program Direct Appropriations From Fund Balance:**

### **Set Aside Appropriation - Open Space:**

This simply needs an additional appropriation.

### **Davis Monument Restoration:**

It is a town project.

Peter Berry commented that its estimate was two years old - what if the bid is low? - do the extra funds go back to the CPA pot?

Andy commented that the estimate was initially \$25,000 but increased to \$40,000. The CPC approved up to \$50,000 - in the future the CPC needs more specific numbers.

John Murray stated that it's not a request to spend \$50,000 - He inquired where the bid documents are.

Dore commented that he could enforce delivery of funds as stated in the Warrant Article. In the future the funding amount should be put in the Warrant Article so it can be referred to; they have the entitlement to spend \$50,000. It has to be voted on - there could be a 20 page agreement.

Walter added that on each project the CPC said to get the best price as the CPC must obey the public bid law.

Re: the Flag Preservation project - the CPC had a purveyor who gave the CPC a quote. Re: the "up to" language, the sense of the committee is the prices are subject to the public bidding law - go with the lowest qualified bidder.

Don said that what it takes to get firm numbers is so extensive they can't prepare it.

John Murray added that every appropriation is "up to".. He guesses that unused funds will go back to the fund.

Mimi expressed a concern re: the landscaping around the monument. If a contractor has to remove the yews, can money get appropriated to restore the landscaping?

John Murray commented that it is a gray area. He stated that the landscaping would go back if it had to be taken out to restore the monument. If it's taken out unnecessarily, then no.

Don added that the Common can't be fixed up - by that he means beyond 5' from the monument; however, a contractor might damage the lawn in which case it would be part of the project to repair it.

There are lots of experienced staff involved; for example, talking with Roland will be helpful; look at the summary of the articles.

The Cultural Research List project changed due to an agreement between the FinCom and the CPC re: the age of the house to be listed. It's town money - it's up to the CPC to enforce the agreement.

Peter Berry commented re: the selection process: the best price will be negotiated for the best qualified consultant. It's an RFP and Don will put it together. It was asked if the CPC can have a representative in on this. Don said that it's between the CPC and the HC.

An RFP will be put out - Don will sit with members of the HC and staff people and that committee will make a recommendation to Don.

Peter Berry commented that he would like Peter Grover to be involved with it.

Andy asked if the CPC should receive approval to be responsible for developing the RFP so that Don has a draft. The draft should be reviewed by the CPC, signed off, and then sent to Don.

In Bedford the CPC stated that they could give no money until the project is completed - there could be progressive payments.

Dore suggested setting up a standard protocol for this procedural part. A new chapter in the CP Plan should be created on what happens when the project is approved.

The HDC is a town committee. They will need to get permission from the Selectmen on where to put their signs in the right of way. Don is responsible for the sign bylaw.

#### **ARRT:**

The applicants gave the CPC a quote. Three quotes are required unless it's the sole source. The new chapter dealing with this procedural part should say the the applicant must comply with the town laws. ARRT is a town project which is also federal; it's lateral construction.

Catherine inquired about the easement and what sort of agreement would be approved.

Don said that he battled the MBTA to get the easement and has negotiated with them since before Town Meeting. The MBTA wants the town to trap beaver and put a 10 year time limit on the construction. They also want to narrow down the easement to 20'. In the first plan the Dept. of Transportation letter stated that the town gets the easement for a certain number of years and EOT will hold a 50' right of way around the property in case they ever want to connect there.

Town Counsel did not agree to trapping beaver nor the 10 year limit. The MBTA could go to the Secy. of Transportation and say they will take 50' of your property.

Peter Berry asked if the federal transportation bill passed. Roland replied that it extended the old bill and the funding is secure for five years.

Mimi observed that the rail trail funding may be spent in the next few years. Meanwhile it sits in the CPC fund, and interest earned will stay in the fund.

Andy asked how it sits in the fund - a cash bearing account of 1-2%?

John Murray stated that the fund is subject to core restrictions - it can't be invested in stocks, etc. A Trust Fund can be invested in stocks if approved by the banking commissioner. The fund is like town money.

### **Flag Preservation:**

The Library may have to do more work before a preservationist is hired even if they have the perfect person lined up. They have two quotes which are close to being sole sources - that communication is necessary. Anne Forbes is not here, and the CPC is struggling with this. Bedford won't fund anything that's not municipal.

### **T.J. O'Grady Skateboard Park:**

Town money may not be given to a private entity to be given back to the town as is not proper. This is controversial. The funds must be spent on the park, but not transferred to the applicant.

Under the Mass. Constitution as a Treasurer, John can't give funds to a charity. He must follow DOR which is conservative.

Walter stated that the applicants gave the CPC \$90,000. The town appropriated a total \$147,000 for the park. The applicant can gift the private donations to the town. The town will maintain the skateboard park. The applicants will work with the Recreation Commission including Tom Tidman and Nancy McShea.

John Murray commented that the applicants said they had the design work done; he saw no bid. When you're on town land, the bid laws apply. Monies given as a gift are exempt. The applicant must show the bid documents and show they have complied with the law.

The applicant could buy a ramp and donate it.

If a project is on town owned land, the Attorney General has a new interpretation - due to prevailing wage records, it is not proper to give the applicant money to gift it back. The Skate Park applicants expect they have \$67,000 to do with what they please, which is not the case.

The applicants plan to get free fill from the golf course and have the town spread it. If the concrete were to crack, the town will get blamed - creating a liability.

Walter commented that two different entities cannot manage the project. This is a town project; It's important to be clear in such complex projects - there can be one manager; there will be different phases of construction. The applicants can get donations and have the site cleared, but corners can't be cut. Is the fill right? A structural engineer must approve the fill. Staff let too much go to the volunteer committee.

- Staff and the skate park representative must know this is how the project will be managed.

No one from the CPC has been invited to participate in this process. Matt L suggested that a CPC member is needed to state the money is not free and clear. Alison Gallagher is the contact person. Andy volunteered to contact her.

#### Family Housing Initiative:

The AHA project is controversial. Roland and Walter said they don't want an opinion from DOR, just from Town Counsel. DOR tends to be parochial. We have matching funds. If DOR says that we did it wrong, we might not get matching funds next year. What if DOR has a different opinion, what can they do?

If the applicant from the Acton Housing Authority comes in with a deed restriction and asked for \$200,000, Town Counsel would pay it. The Board of Selectmen must sign a warrant; the Town Accountant signs it first.

Town Counsel says that it's appropriate; however, there is a risk if DOR were to come back and audit. The Town receives the deed for all real property. Deed restrictions must be made out to the Town. That is what we buy - not the condo. The town will hold all the deeds; the Acton Housing Authority put up 3/5 of the money. Town Counsel crafted an opinion - they hold the real property with a restrictive covenant. Don stated that the Acton Housing Authority is responsible for complying with the bid laws. The DHCD won't defend you - they protect state interests.

John Murray stated that all real property interests must be deeded to the town. Town Counsel defines property interests. We can support the Acton Housing Authority's request. John wants to be sure there is no penalty. He relies on Town Counsel 50% of the time. He is trying to protect us.

Erin commented that it is odd to do an RFP for condo's for sale - to get three qualified bids. Roland stated that if you get two bids, you are ok. Put our criteria in the RFP, and they will respond to what we need.

If you go to DOR, they and the Housing Authority will put together a letter. Roland suggested sending the RFP to people who are interested.

#### **Morrison Farm Master Plan:**

Town projects are done under the Selectmen; apply to the board, and they will make the committee. Don commented they expect direction from the Selectmen on what to put together on the scope of services; They'll construct the RFP and send for bids. The Selectmen will appoint a committee and will set policy for us.

#### **214 Central and 28 Willow Streets Feasibility Study:**



This project requires doing a feasibility study on town land. Don recommends to run it through the town process.

Catherine commented that it's like the Skateboard Park in that there is a private entity. She asked why wouldn't they be able to use the money.

Don commented that this goes to the body of law - it's not black and white. He sat with Town Counsel. Nancy Tavernier disagrees.

Peter Berry stated that they are not a private corporation. The Selectman approved them to open a bank account. Once they do it, they're responsible. They must have their own tax id#. The act forms a corporation. If it goes out of business, they can hold, lend, sell, and buy; the issue is the town - It won't hold her up.

### **Community Housing Fund:**

This is a specific fund of the town of Acton which can be used by the ACHC or any other entity that the Board of Selectmen may determine, in support of community housing. To turn over the fund to the ACHC or any other entity will require a Selectmen vote. It could be an entity such as Habitat for Humanity. It's a town fund under the control of the Selectmen. The CPC is invited to have input.

Nancy asked how the Housing Fund is going to get settled. \$25,000 can be moved to a fund under the control of the Board of Selectmen. Nancy wants to merge the funds with the New View funds.

Theoretically to start a home rehabilitation program one could give \$1000-\$3000 grants to income eligible households. That could be done out of this fund.

John Murray stated his only experience is with septic loan programs. He doesn't pay the contractor directly (gray area) a person fronts the money, then he gives it; he would ask Town Counsel.

### **Administration and Operating Expenses:**

Under the Town Bylaw an account stays open for three years. After three years it expires. The appropriation goes back to Town Counsel who will roll over the appropriation. Once it starts it can roll over forever.

Walter stated that he read a DOR bulletin about an unencumbered balance - that it is closed to the CP Fund.

Catherine had a question re: the three year expiration date. Can we put our own restrictions on? Maybe the CPC wants it down from three years. John said he would check with Town Counsel. It would have to be in the Town Meeting action. It could be a big problem.

Don said that we have all come a long way in a short time. In a couple of years it will be smooth.

### **Publicity:**

Mimi suggested that while the monument project is ongoing, to garner publicity for the CPA, that the CPC consider putting up a sign, "Funded by the CPA - Tax \$ at Work." The same could be done on the Skate Park site.

Don felt it is a good idea depending on the project.

Andy thanked Don and John for the education.

## **6. Updating CPA Plan**

Proposed New Chapter for CP Plan Dealing with Procedural Issues:

Nancy thought it was too bad that all the applicants weren't here. They will all have to be informed. Right now this sounds cumbersome.

Andy commented that the applicants should have been informed re: bids, etc. going through the process, but the CPC didn't know at the time. Westford and Bedford CPC's knew their projects inside and out, but the the Acton CPC didn't have the time.

Nancy would like the CPC to put together in writing a description of what we want and to fax it to her. For example, less than \$25,000, no RFP required; no staff review, no Town Counsel review.

John M. added re: quotes - look for uniform quotes (on the same thing).

- Look at the businesses track record (will they complete the work).
- Acton has a credit rating and can review the quotes with the agency.
- Roland added that the RFP should have a scope of services.

John Ryder stated that the CP Plan should explain public bidding laws, etc.

Peter B. asked John to issue regular finance reports once/month.

Catherine brought up next steps. The CPC should get those five outside project people to meet here for process - to keep control and contact.

Peter suggested we need applicants to sign on to a term sheet.

Mimi suggested asking for an interim report - quarterly or semi-annually and to have each group in for 10 minutes.

## **7. Adjourn**

Respectfully submitted: Susan Mitchell-Hardt