



## *the Newton Conservators*

# NEWSLETTER

Fall Issue

<http://www.newtonconservators.org>

September 2000

### Message from the President

## A Dawdling Start for Community Preservation

By Doug Dickson



After years of effort, frustration and disappointment, the Community Preservation Act, a shadow of the earlier versions that more appropriately bore the name, was signed into law this month by the governor. This same governor surprised his Environmental Affairs secretary and the legislative leadership by vetoing a bill in July that he earlier had indicated he'd sign.

It turns out, now that we see his compromise position, that the governor vetoed the Community Preservation Act in July because of a \$10 difference of opinion. The governor's quibble involved the amount paid for a certificate of municipal lien. This fee applies only when a property is sold, maybe a couple of times in a typical individual's lifetime, and it occurs in the context of transactions worth hundreds of thousands of dollars in today's market. The legislature set a \$20 surcharge on the current fee, along with a \$20 surcharge on a deed transaction fee (which, interestingly, the governor agreed to let stand) to form a pool of state matching funds.

To the governor, the \$20 lien surcharge was somehow extravagant. He decided to hold out for \$10. Never mind that the extra \$10 won't buy dinner or a full tank of gas—in today's economy, it's a trivial amount. The terrible reality is that in taking this stand, the governor signaled he was willing to delay and possibly imperil altogether this important initiative while undeveloped land is being lost at a rate of 40 acres a day across the state. For reasons that still aren't clear, he put the whole

works up for grabs for nothing more significant than a sawbuck.

But what amounts to a minuscule difference when measured by each transaction, adds up to a substantial reduction of state funds to match local community preservation efforts. So not only has the governor nickel-and-dimed the legislature on the surcharge, but he has undermined the purpose to which the fee is dedicated.

This is the second time the governor has taken a position that undermines the Community Preservation Act. Earlier he made it clear he would not sign the bill if it included the real estate transfer tax as an option for funding community preservation initiatives. The Senate passed a version of the bill that included this option. But, for reasons that can only be construed as acquiescence to the real estate lobby, the House leadership permitted a vote on a bill with one option only—a surcharge on the real estate tax. Now local communities have only one choice for funding community preservation—real estate surcharge, up or down. This may make it more difficult for some cities and towns to build support for community preservation at the local level.

The tepid Community Preservation Act signed into law this month unfortunately bears the stamp of a governor who, we must conclude, is not really in favor of community preservation. And given the legislature's inclination to compromise rather than challenge the governor on this issue, they have demonstrated their unwillingness to fill the leadership void he has created.

## **A Community Opportunity for Newton**

by Jim Broderick

Fortunately Governor Cellucci's bark is worse than the bite he took out of the Community Preservation Act. On Sept. 14 he claimed credit for reducing proposed filing surcharges from \$20 to \$10. In fact the \$20 surcharges on the registration of deeds and of land remain in the Act he signed. Only the proposed \$20 surcharges on certificates of municipal liens have been reduced to \$10.

However, the Governor did introduce a new exemption from any surcharge, the declaration of a homestead, a much less frequently filed legal instrument. The result of these amendments is that the state CP Fund will annually collect 26.4 million dollars instead of 30 to 40 million. Another amendment changed the effective date of the CPA from "immediately" to Jan. 2001. It may be useful to repeat here a summary of the Act's major provisions printed in the July Newsletter.

The CPA provides a way for cities and town to have a dedicated funding source to preserve open space and historic sites and to provide affordable housing. That way is the approval of a local referendum establishing a surcharge of up to 3% on the real estate tax levy. One or more of three exemptions to the surcharge are allowable: for \$100,00 of the assessment, for property owned and lived in by low-income residents, and for class 3, commercial, and class 4, industrial property.

A state CPA Fund will annually distribute its revenues to communities that "accept" the CPA by referendum; this fund is fed by the surcharges on the filings in the Registry of Deeds and the Land Court referred to above. No further acts or appropriations by the General Court will be required to continue the Mass CPA Fund.

Each community will establish its own Community Preservation Committee to administer programs and recommend to the local legislative body projects and the allocation of funds. These allocations "shall not replace operating funds, only augment them." Furthermore each CPC must allocate not less than 10% of its annual revenues for "open space, but not including land for recreational use," not less than 10% for historic resources and not less than 10% for community housing.

(Allocations from the remaining 70%, however, can be made for parkland for either passive or active recreational use.)

The local CPC can use all of its revenues in a year or place in escrow all or part for future projects; and it can float bonds against its local CP Fund. In July this seemed "farsighted legislation," and it still does.

There are many questions about how Newton may respond to the challenge of the CPA, but there are some guidelines the Act offers as to when it can. The Act specifies that a referendum can only be submitted as part of a regular municipal or state election. The next Newton election is scheduled for Nov. 6, 2001. The CPA referendum must be entered 35 days before a municipal election (Oct. 2, 2001). Therefore either the Board of Aldermen or 5% of Newton's registered voters will have to submit a referendum by the beginning of October 2001 if Newton wants to test its voters' sentiments about the CPA.

There are reasons why an early "acceptance" of the CPA is desirable. Each year the total revenue in the Mass CP Fund will be distributed to communities in sums up to 100% of the revenue each CPC has raised; we can assume that the number of accepting communities will grow in time, but in the first years the number is apt to be low. Of the 351 communities in Massachusetts, 68 have already petitioned the legislature for home rule on community preservation, among them Brookline and Cambridge; many of these are likely to be the first out of the gate. If so, for instance, Brookline and Cambridge by a 3% surcharge could raise \$2,750,000 and \$4,750,000 respectively and their shares from the state CP Fund could be 100%.

There will be generous shares in the Fund's first years. These communities have an advantage since, presumably, their voters have already been educated about the need for funds to preserve their communities.

My informal surveys of friends in Newton reveals some lip service to a desire for more open space but both ignorance of the fifteen-year campaign to enact the CPA and a hostility to any tax increase. A coalition of advocates of open space, the preservation of historic sites and landscapes, affordable housing and recreational parkland should be organized soon.

Among its first tasks should be the collection of information on Newton's needs and opportunities in these areas. We should develop statistical tables on the revenue for each 1/2% up to 3% possible surcharge with each of the exemptions allowable. We need to ensure that accurate data informs the debate about the details of the referendum to be offered to the voters. And then we need to provide open forums and media articles about the CPA. The Newton Conservators, Inc. can be a leader in this effort.



Old Rock Bridge in Auburndale Park

## Making Good Decisions

by Doug Dickson

Two recent cases point up the need for a process to guide inter-departmental and inter-board decision-making in city government.

**Levingston Cove.** Construction began at long last to renovate Levingston Cove on Crystal Lake this summer. No sooner had the project begun than it was halted by neighborhood concerns about the extent to which the plans had changed since neighbors collectively signed off on the renovation.

Well-intentioned efforts by the engineering department and the Mayor's Committee for People with Disabilities had radically altered what started out as erosion control and a general sprucing up of the area. Now the character of the place was being irrevocably changed with ramps, walkways, retaining walls and railings.

The Parks and Recreation Commission, which has jurisdiction over park lands, approved a preliminary plan but was never shown the final

construction plan. Likewise, the Landscape Advisory Council, also charged with reviewing and approving projects of this type, last saw a plan three years ago, long before engineering and the disabilities committee got involved. Moreover, the neighborhood, which had instigated the project in the first place, was not informed about the changes. So, while all the right bases were touched on the preliminary plans, each of these groups of stakeholders was effectively excluded from commenting on major changes in the final plan.

**Hammond Pond.** A proposal to subdivide a property on the eastern shore of Hammond Pond was approved by the city despite the fact that the new lot created by the subdivision had long been listed on the city's Open Space Plan for acquisition or restriction. Because of its location, the building proposed by the new owner required approval by both the Historical Commission and the Conservation Commission. In the absence of guidelines about which Commission takes precedence in the decision process, the Historical Commission completed its work first and, without knowing it, limited the extent to which the Conservation Commission could restrict building within the wetland buffer zone.

The failure of the city to prescribe a process defining sequencing and staging of decisions among various boards and departments results in additional costs, lost opportunities and erosion of public trust. In a recent letter to the mayor, the Newton Conservators asked that such a policy be developed by the Landscape Advisory Council for projects that involve the various departments and boards represented on that committee.

Such a policy would make clear who needs to be involved in certain types of decisions, at what stages they need to be consulted, and the order of decision-making, taking into account the factors driving the decision or from which the decision arises. Using the second case outlined above, for example, (leaving aside the question about whether the subdivision should have been approved in the first place) its listing on the Open Space Plan should have put the Conservation Commission in a priority position with respect to decision making. The Historical Commission would have sequenced its process accordingly. In a case involving historical preservation, the Historical Commission would move into the lead, and so on.

While common sense helps keep the city out of trouble much of the time, it obviously takes more than that to assure a hundred percent record. We urge the mayor to move forward on this matter before another opportunity is lost or another embarrassing situation develops.

## **Andover-Newton Hill**

by Sarah Barnett

For several years now, the Newton Conservators have been concerned about approximately 20 acres of land on Institution Hill in Newton Centre that has been owned by Andover Newton Theological Seminary. Approximately 6 acres has been sold to Hebrew College, which is now constructing on the site. Another 3 acres will be the site of Management Sciences for Health (MSH), which trains health care workers to serve in third-world countries. The largest portion is slated for a housing development by Terraces, Ltd.

**Terraces.** The Newton Conservators and Newton's Open Space Plan have for many years advocated for the preservation of the Vista, unobstructed, from the top of Andover Newton Hill south to the Blue Hills, 10 miles away.

On Sept 11 Terraces filed for a special permit to build 38 large townhouses on 8 acres of the southern slope between Langley Rd and Cypress St. The Land Use Committee will hold a public hearing on this proposal on Tuesday, October 10, 7:45 pm, Newton City Hall.

If a person stands at the end of the Andover Newton green in front of Stoddard Hall, the proposed placement and height of the townhouses seem to preserve the Vista to the Blue Hills. However, this needs to be carefully checked since the roof ridges are at many different elevations (from sea level), and at many different distances from the top of the Hill.

Additionally, land between the end of the green and the townhouses would be owned by Andover Newton, Terraces, and leased by MSH. It is important that any landscaping or building on these properties not block the view from the end of the A-N green.

Terraces is also proposing a walk for pedestrians from Langley Path (which is an access road to Bowen School and a Newton playing field)

through the Terraces development to the top of Andover Newton Hill. They are also proposing a conservation easement on 2 acres of the very steep slope on the west side of the Hill. The easement would run along Cypress St. from Appleton-Chase to the Boiler House; it would vary in width from 10 ft to 150 ft.

**MSH.** On July 28, Management Sciences for Health applied for an administrative permit to build a 40,000 sq ft office building and parking lot on 3 acres on the southeastern side of Andover Newton Hill. The Bowen-Thompsonville Neighborhood Association is working with the Newton Planning and Development Department to arrange a public meeting for citizens to exchange ideas about the development. Because MSH is applying for an administrative permit, the Aldermen do not vote on the proposal and there is no required public hearing.

### **Old Oak Tree on MSH Site**



MSH will lease the 3 acres from Andover Newton Theological School. The MSH plans place the flat roof of their office building at elevations ranging from 295 ft (higher than A-N Hill) to 280 ft. To the west of the building is a parking lot for 50 cars. Additionally,

Andover Newton Theological School proposes a parking lot for 60 cars just west of the MSH land on the southern slope. This A-N parking lot will be for the exclusive use of MSH. Blueprints of Terraces and MSH also indicate that Andover Newton will have an additional parking lot built for 13 to 20 cars immediately south of Davis Hall. Therefore, between the A-N green and the Terraces townhouses there are plans for a distance of about 300 ft for parking lots.

Some of the MSH land probably provides underground water to the Brook in the Webster Vale. (Because of sustained efforts by the Conservators many years ago, the Vale with the Brook and its headwaters are now preserved in perpetuity with a conservation restriction. The Vale

is adjacent to the Webster Conservation Area.) Whether or not the surface water drainage system for the office building and parking lots provides for the recharge of ground water which flows into the Vale needs to be carefully checked.

The Charles River Watershed Organization and the Massachusetts Department of Environmental Protection strongly recommend that developers design surface water drainage systems that: 1) recharge the ground water where it has been removed, and 2) pollutants be removed from the surface water before entering the recharging system or municipal storm sewers.

**Hebrew College.** On August 8, Hebrew College applied for a special permit to add 30 ft to its proposed library and to be exempted from the additional setback requirement of 10 ft which a larger building requires. At the public hearing on Sept. 12 no opposition was expressed for the 30 ft. addition to the proposed library building. However, the question arose as to why HC was asking for a waiver from the 10 ft additional setback when they had the space for it. Also, at the hearing, much concern was expressed in regard to the 80 ft swath of trees that had been cut down between Langley Rd and the proposed campus. (After the special permit was granted, it was decided that not only water and sewer would come from Langley Rd but electricity, phone, and a gas line, and that the water pumping station would be located by the road. Thus a much broader corridor was needed than envisioned in the special permit.) It was asked that this bare land be quickly replanted with trees and shrubs. In the interest of traffic and pedestrian safety (students likely to be dropped off by cars stopped on Langley Rd) it was asked that access to the Hill by way of this corridor never be allowed.



For current information on these developments contact BTNA at 965-5880 or LSull487@aol.com.

**Bridge at Kennard Park**

## How Protected is Our Open Space

by Ruth Balsler

Are parks and conservation lands conserved forever?

Article 97 of the Massachusetts constitution declares that, "The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment."

While the Massachusetts constitution defines a protected environment as a basic right, it also allows for the disposition of conservation land by a 2/3 vote of the Legislature.

The issue of the loss of parkland came to my attention early in my first term as State Rep when a bill to use parkland in Winthrop for a school was being heard by the Joint Committee on Local Affairs. The Environmental League of Massachusetts and Historic Massachusetts opposed the bill charging that the School Building Assistance Program was steering municipalities away from the rehabilitation of historically valuable buildings, and encouraging new construction on what was the only affordable space in town – the local parkland. Committee members expressed concern about the loss of open space, but in the face of a densely developed community, which needed a new school, and the pressure from local officials and legislative colleagues, the committee tended to approve these requests.

When I opposed the Winthrop bill, the Committee decided to form a sub-committee to look at the problem and I was asked to chair it. The sub-committee reviewed ten years of land transfer legislation. The impression that parkland was being lost with alarming frequency was confirmed.

Last summer, I convened a meeting of legislators, environmental activists, the Department of Education, the Office of Environmental Affairs, and Administration & Finance. The problem was acknowledged, but all described the pressures on them to approve projects. I became convinced that the solution was to pass legislation that would not allow transfers of Article 97 land unless the land was replaced.

Meanwhile, the sub-committee recommended that SBAB revise its policies to encourage rehabilitation rather than new construction. Within six months, the Governor released a report

supporting that change. Also, Secretary Durand's department will not approve the use of state funds for projects that do not meet the standard of "no net loss". And the Local Affairs Committee is pressing for replacement land in every instance where we are asked to approve the transfer of Article 97 land.

While these are steps in the right direction, they are insufficient. Nothing made that clearer than an event that occurred moments before the term ended.

Local Affairs had blocked a bill to build a school on Glendale Park in Everett. It was rumored that supporters of the bill were planning to move it onto the floor on July 31. The Local Affairs Committee was prepared for a floor fight. I watched the board all night to see if the Everett bill was about to be voted. (These bills need a 2/3 roll call vote.) I went home relieved that midnight arrived, but the Everett bill had not. On August 1, I learned that the Senate President (whose district includes Everett) included the land transfer in an unrelated and lengthy bond authorization bill, that was voted on a roll call moments before the session adjourned.

Traditionally, the Legislature handles these bills as a courtesy to colleagues who are advocating for their districts on a matter of only local concern. In this case, I believe that what is viewed as a courtesy to colleagues, was actually a violation of the trust the Commonwealth has placed in us, to protect the right of the people to a clean environment.

For this reason, I support passage of Senator Pam Resor's "no net loss" bill that mandates replacement land. Filed twice, this bill won committee approval, but never came to the floor of either chamber for a vote. Next term, Senator Resor will introduce it in the Senate, and I will sponsor it in the House. We have already begun to build support for this bill in the next term.

The Legislature wants to enable municipalities to acquire open space. Let's make sure that as we acquire open space, it is protected forever.

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Newton Conservators, Inc.

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## **Metro Parks Meets with MDC Commissioner Balfour**

by Mike Clarke

The Metro Parks Council, which involves representatives from essentially all the major environmental groups around greater Boston, has begun addressing regional open space issues and MDC policies. On September 20, the Metro Parks Council met with MDC Commissioner Balfour and representatives from the Massachusetts Secretary of Environmental Affairs Office. An area of particular concern is the whittling away of MDC open space by transfer under Article 97 (see previous article) for other purposes.

Newtonians are well aware that many acres of MDC open space along Rte 9 near Hammond Pond were sold to the developers of the Chestnut Hill Shopping Center 40 years ago. But more recent examples include 42 acres of the Mystic River Reservation that were ceded to the local municipality and current plans to construct an ice hockey complex in the Middlesex Fells Reservation, to fill the Granite Rail Quarry in Quincy with fill from the Big Dig, and to build hockey rinks and a "mini Fenway" ballpark at the Blue Hills Reservation.

Another question for the MDC is its progress in attaining the goals set forth in the 1996 Green Ribbon Commission Report. What are the barriers to attaining these goals and what might the Metro Parks Council do to assist the MDC in moving toward these goals?



**Stearns Park**

# Newton Conservators Fall Walks 2000

Saturday, October 7, 2 PM

## **Tree Walk at Newton Cemetery**

Created in the 19th century naturalistic style pioneered by Mr. Auburn Cemetery in Cambridge, Newton Cemetery is beautifully landscaped. Join Doug Dickson (969-8661), Conservators president and a member of Newton's Tree Commission, which is co-sponsoring this walk, to view the variety of specimen trees that have been planted there. Meet by the administrative building just inside the main entrance on Walnut Street.

Monday, October 9, 8:00 AM

## **Columbus Day Birdwalk at Nahanton Park**

Nahanton Park is a magnet for fall migrants, notably sparrows, and many rarities have turned up here in past Octobers. Bring binoculars and let's find them! Use the Winchester Street entrance and meet in the paved parking area, next to the grassy meadow. Leaders Chris and Judy Hepburn (964-1137). Co-sponsored with the Brookline Bird Club.

Sunday, October 15, 2:00 PM

## **Charles River Walk**

This walk is to introduce you to the lower Charles River basin and its magnificent walkway with overlooks that the MDC completed just over a year ago. Meet in Watertown Square, at the stone MDC pillars on Galen Street. Parking is available at the very nearby MDC parking lot off Pleasant St. in Watertown, next to the Sasaki Landscape Office sign and MDC pool. Trip leader: Peter Kastner (244-6094).

Saturday, October 21, 1:00 PM

## **Canoe Trip on the Charles**

Our canoe trip up the Charles leaves from Nahanton Park's canoe landing (off the Nahanton St. entrance). It is a leisurely paddle that explores a seldom-visited stretch of the river that seems far away from its urban setting. The broad wetlands are well populated with ducks, geese, blue herons and the occasional hawk or egret. If you would like to join the trip, need a canoe or could loan one, call trip leader Mike Clarke (552-3624).

Sunday, October 22, 11:00 AM

## **Hyde Tour de Newton Bike Ride**

Join a bike ride to benefit the Brigham Community House that will follow the Tour de Newton, a biking circuit designed by Mike Clarke, past president the Newton Conservators, as our way to link many of Newton's parks, lakes, the Charles River and other open spaces. This refreshing and social two-three hour ride is recommended for ages 12 and up, and all minors must be accompanied by an adult. The aim is to have a good time, not fastest times. The tour will go on if there is a light rain, so a waterproof windbreaker is recommended. In the event of more extreme weather, the Hyde Center phone (527-4933) will carry any cancellation news. Call there also, if you'd like more information. Meet at the Hyde Center gym in Newton Highlands at 11:00 AM. Being a benefit, there is a \$5 registration fee, nonrefundable in case of rain., that will be donated to the Brigham House and its programs. Any one wishing to donate directly may send tax-deductible contributions to: Brigham House, c/o NCSC, 492 Waltham St., West Newton, MA 92465.

Sunday, October 29, 9:30 AM

## **Nature Photography at Cold Springs Park**

Join trip leader Dan Perlman (969-3047), who has long been documenting on film the changing seasons at Cold Spring Park, on this walk that will emphasize techniques of nature photography. Bring a camera and if you have it, a tripod. The trip will meet at the end of Duncklee Road, which is the 4th right off of Walnut St. south of its intersection with Beacon.

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**MEMBERSHIP FORM**

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Renewal

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Address: \_\_\_\_\_

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E-mail: \_\_\_\_\_

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Donor	\$50
Patron	\$100
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Total	\$_____

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**Newton Centre, MA 02459**

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**OFFICERS**

President: Douglas Dickson, 17 Oxford Rd, 02459	969-8661	ddickson@mediaone.net
Vice Pres: William Hagar, 248 Winchester St, 02461	964-2644	william.hagar@umb.edu
Treasurer: Katherine Howard, 84 Fenwick Rd, 02468	527-1796	howard_katherine@hotmail.com
Secretary: Judith Hepburn, 132 Stanley Rd, 02468	964-1137	hepburnj@bc.edu
Past Pres: Michael Clarke, 38 Halcyon Rd, 02459	965-5174	<a href="mailto:clarke@bc.edu">clarke@bc.edu</a>

**DIRECTORS**

Margaret Albright, 166 Edinboro St, 02460	244-6145	albrightm@mediaone.net
Nancy Avery, 34 Beacon St, 02467	232-5280	jtavery@rcn.com
Stephanie Bacon, 541 Hammond St, 02467	734-2904	ssbacon66@hotmail.com
Corry Berkooz, 34 Janet Rd, 02459	641-0763	cberkooz@aol.com
Lee Breckenridge, 40 Oakmont Rd, 02459	527-4904	l.breckenridge@nunet.neu.edu
James Broderick, 21 Groveland St, 02466	332-3465	formosush@mediaone.net
Larry Burdick, 180 Dudley Rd, 02459	969-0414	burdick@mediaone.net
Lucy Caldwell Stair, 46 Woodcliff Rd, 02461	928-3375	longwood@mediaone.net
Bonnie Carter, 177 Homer St, 02459	969-0686	bonniehcarter@aol.com
Michael Collora, 40 Kelveden Rd, 02468	964-3294	mcollora@dwycercollora.com
Carol Lee Corbett, 377 Cherry St, 02465	332-4015	
Ed Dailey, 67 Maplewood Av, 02459	332-6987	edailey@bromsun.com
Sheila Decter, 13 Ranson Rd, 02459	527-0840	decter@ajcongress-ne.org
Burton Elliott, 319 Highland Av, 02465	244-8920	burtonell@aol.com
Roger Feinstein, 96 Roundwood Rd, 02464	969-0942	feinstein@umb.edu
Jason Glasgow, 47 Oxford Rd, 02459	527-3107	jglasgow@emc.com
Frank Howard, 34 Fairfax St, 02465	244-7269	dandfhoward@rcn.com
Ted Kuklinski, 24 Henshaw Tr, 02465	332-7753	tkuklinski@aol.com
Eric Reenstierna, 15 Otis Pk, 02460	969-5820	
Marty Sender, 47 Kingswood Rd, 02466	244-5681	msender@mediaone.net
Andrew Stern, 56 Tyler Tr, 02459	969-9898	astern@ebglaw.com

**ADVISORS**

AnnaMaria Abernathy, 45 Islington Rd, 02466	244-3447	amaber@aol.com
Lisle Baker, 137 Suffolk Rd, 02467	566-7564	
Rodney Barker, 49 Woodcliff Rd, 02461	244-6949	
John Bliss, 9 Lewis St, 02458	244-6495	
Thelma Fleishman, 14 Kenwood Av, 02459	244-5598	
Sally Flynn, 33 Whitney Rd, 02460	965-6297	sally_flynn@newton.mec.edu
Bart Hague, 110 Roundwood Rd, 02464	969-3640	barthague@aol.com
Helen Heyn, 21 Alexander Rd, 02461	969-5712	
Deborah Howard, 34 Fairfax Rd, 02465	244-7269	dandfhoward@rcn.com
Jean Husher, 1686 Beacon St, 02468	527-5981	
William Jones, 92 Bullough's Pk, 02460	527-9110	
Lawrence Kaplan, 26 Parker St, 02459	527-3449	
Peter Kastner, 49 Woodbine St, 02466	244-6094	cpkastner@rcn.com
William Leitch, 69 Dexter Rd, 02460	244-0771	
George Mansfield, 312 Lake Av, 02461	969-1479	
Richard Primack, 16 Stiles Tr, 02459	332-1684	primack@bio.bu.edu
Frances Seasholes, 163 Cypress St, 02459	969-5927	
William Shaevel, 881 Dedham St, 02459	965-1534	
William Stevenson, 168 Nevada St, 02460	527-0411	stevenw@bc.edu
Roger Swain, 20 Columbus St, 02466	332-0555	rswain@primediasi.com
Verne Vance, 101 Old Orchard Rd, 02467	232-5494	
Brian Yates, 1094 Chestnut St, 02464	244-2601	byates@ultranet.com

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Newton Centre, MA 02459

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