

The Newton Conservators' Spring '96 Newsletter

MAY 1996

You are Cordially invited to the Newton Conservators'
Annual Meeting and Dinner
and to the presentation of the
Environmentalist-of-the-Year Award to The Commonwealth Avenue Task Force
represented by William Gillitt, Chairman, Elaine M. Gentile, and Jean Husher
Wednesday, May 29, 1996
Noyes Hall, Andover Newton Theological School

6:30 Social Time
7:00 Dinner
8:00 Presentation of the Environmentalist-of-the-Year Award
8:10 Business Meeting
8:25 Speaker: James Gomes, President, the Environmental League of Massachusetts
Topic: "The Future of the Massachusetts Environment"

R.S.V.P. by Monday, May 20 to Sally Flynn 965-6297

Agenda for the Business Meeting, AMENDED

1. Treasurer's Report
2. Report of the Audit Committee
3. Report of the President
4. Election of Officers and Board of Directors
5. Vote on amendment to the bylaws to change the Membership Dues:
New Member \$10.00 (new category)
Individual Member \$20.00
Family Membership \$25.00
Sustaining Membership \$35.00
Donor \$50.00 (no change)
Patron \$100.00 (no change)

Proposed Amendment to the Bylaws

The bylaws may be amended at annual meeting by the affirmative vote of at least two-thirds of those members present and voting, provided such an amendment is approved by the Board of Directors and notice is given to the members in writing in advance of the annual meeting.

The Board of Directors proposes the following amendment to the bylaws. (Words underlined are to be added, words in [brackets] are to be deleted.)

Article VI - Members

Section 1. There shall be four classes of members of the corporation: *new member*, *individual* member, family membership, sustaining member, *donor*, and patron....
Section 2. The membership fee for *a new member shall be ten dollars (10.00)*, an individual member *twenty dollars (20.00)* [(ten dollars (\$10.00)); for a Family Membership, *twenty-five dollars (25.00)* [(fifteen) dollars (\$15.00)]; for a Sustaining Member, *thirty-five dollars (35.00)* [twenty-five dollars (\$25.00)]; *for a Donor fifty dollars (\$50.00)*; and for a Patron, one hundred dollars (\$100.00).

Sunday Spring Walks 1996

May 19, 2:00 pm
Aqueduct Walk
Leader: Nicholas Yannoni 4440166

May 26, 2:00 pm
Hammond Woods
Leader: Lawrence Kaplan 5273449

June 2, 2:00 pm
Hemlock Gorge
Leader: Vaunita Schnell 968-3620

June 16, 2:00 pm
Charles River Walkway - Lake District
Leader: Peter Kastner, 244-6094

Environmentalist-of-the-Year

At the Annual Meeting, the Environmentalist-of-the-Year Award will be presented to William Gillitt, Elaine Gentile and Jean Husher as representatives of the Commonwealth Avenue Task Force. These individuals were chosen to receive the award because they show that individual citizens working with a responsive local government can have a profound and positive impact upon the quality of life; what had started as a misdirected highway plan to change Commonwealth Avenue into a four-lane highway was stopped by active citizens and d redirected so as to maintain the original vision of Commonwealth Avenue as a linear park, while at the same time developing plans and guidelines to improve public safety.

The Commonwealth Avenue Task Force was appointed in December, 1988 by Mayor Mann to evaluate the design plans prepared by Storch Engineers for Commonwealth Avenue. As stated in the Task Force's Report, "It was due to the public's perception that the work proposed for the Avenue by Storch Engineers was a direct threat to its character"...that Mayor Man in a letter to the Aldermen of May 9, 1989 stated "...based on the recommendations that have been made to me by the Task Force...I have rejected the 25% Design Plan submitted to the City by Storch Engineers, which would have necessitated the removal of trees, the creation of a stabilized shoulder and other changes that I found unacceptable."

For almost eight years, the Commonwealth Avenue Task Force, under the chairmanship of William Gillitt, has continued to guide the City in the rebirth of Commonwealth Avenue. The Task Force, in a large part due to the efforts of Jean Husher, has maintained the historical vision of a linear park while reworking traffic patterns with particular concern to village intersections. Elaine M. Gentile, Special Projects Director for the Department of Public Works, helped manage the project including following up on the complex relationships between city and state government.

The Newton Conservators Newsletter appears three or four times a year. Production: Bonnie Carter, 969-0686. President: Peter Kastner, 244-6094. We wish to thank the contributors to this edition of the Newsletter: Michael Clarke, Douglas Dickson, Deborah Dyer, Burton Elliott, Peter Kastner, Janet Macleod, Marty Sender, and Linda Morrison. We also wish to thank Newton Cable Access Corporation, NewTV13, for the use of its word-processing equipment.

Annual Meeting Speaker: Jim Gomes

Jim Gomes, president of the Environmental League of Massachusetts will be the speaker at the Newton Conservators annual meeting on Wednesday, May 29 at 6:30 pm at the Andover Newton Theological School. Mr. Gomes will speak on "The Future of the Massachusetts Environment."

Mr. Gomes was previously Massachusetts Undersecretary of Environmental Affairs and was the chief administrative representative in negotiations that led to the enactment of the landmark Massachusetts Toxics Use Reduction Act in 1989. Jim began his career as a practicing attorney at the Boston firm of Hale & Dorr and as a Massachusetts Assistant Attorney General. Earlier, he served as Policy Director of Senator John Kerry's first successful Senate campaign and Executive Assistant to the Senator.

After leaving government service in early 1991, Jim became a non-profit executive. He was Chief Operating Officer of Ashoka: Innovators for the Public, a Washington-based international development organization, prior to returning home to Massachusetts and becoming President of ELM in 1993. An expert on implementation, Jim has frequently consulted with other northeastern states on improving their environment programs and has lectured at several universities including Boston University, Brandeis, Harvard, and Tufts. He is a Senior Research Associate of the Gordon Public Policy Center at Brandeis, a member of the Gordon Center Advisory Board, and serves on the Environmental Section Steering Committee of the Boston Bar Association. In 1995, Harvard Law School awarded him a Wasserstein Fellowship for his contributions to public interest law.

Mr. Gomes holds a B.A. in Political Science from Trinity College, a Masters Degree in Public Policy from Harvard's Kennedy School of Government, and a J. D. from Harvard Law School. He lives with his wife and their two children in Arlington, Massachusetts.

The Environmental League of Massachusetts (ELM) is a non-profit, nonpartisan organization that works to bring about strong, responsible environmental policies in Massachusetts. ELM's current priorities include the passage of new Open Space Bond and Rivers Protection legislation, preventing unnecessary use of toxic chemicals, assuring compliance with environmental laws and protecting state parks and forests. With offices on historic Beacon Hill, ELM is the only organization that works exclusively on environmental policy issues in Massachusetts.

Irwin Road Update

by Peter Kastner

Herman J. Smith, Jr., Justice of the Superior Court determined the ten-taxpayer case brought by the Newton Conservators in favor of the developer, Nicholas Heras, Jr. largely on procedural grounds without ever reaching the substantive legal arguments. Members of the Newton Conservators, along with several neighbors near the proposed Laura Estates Subdivision, questioned whether the Conservation Commission's Order of Conditions, approving the construction of an elevated road causing the blocking of the uninterrupted flow of water within a flood plain area, could be built in the City's floodplain zone. Simply stated, the ten-taxpayer suit argued that Newton's Floodplain/Watershed Ordinance forbids the construction of this road through the floodplain zone.

Initially, the defendant attempted to have the case dismissed, claiming that the ten taxpayers had no standing, since they are not directly impacted by the development. It was the position of the plaintiffs that the City's floodplain/watershed ordinance, and floodplain boundaries were developed to protect the City against potential harm and that any substantial violation of the ordinance would therefore subject the City to potential harm.

Judge Smith, dismissing the case, noted that "plaintiffs offer no proof of actual or potential harm, and have no reasonable expectation to do so" raised the threshold for legal standing to a higher level than was anticipated. Later, the judge stated that "Their lay opinion that any construction on a floodplain will result in increased flooding is unsupported by any concrete evidence of scientific analysis, and is not sufficient to create a general dispute of material fact. In no way does any admissible evidence of the plaintiffs controvert the expert opinion of Mr. Carlson (the consultant for Mr. Heras)." Put in lay terms, a ten-taxpayer suit needs to prove that not only does the action violate an ordinance, but the violation would cause serious harm.

The plaintiffs were at a serious disadvantage due to the court's reluctance to overrule a local conservation commission, as well as the developer's financial commitment to pursue an aggressive and expensive legal fight due to the tremendous financial rewards at stake. In addition, the Conservation Commission did very little independent fact finding, and hence the plaintiffs were faced with the task of arguing the law, as well as developing independent expert testimony.

While the plaintiffs did not believe that to have standing they would have to go beyond alleging that the project violated the City's ordinance, arrangements had been made for a volunteer engineer to review the project. The volunteer engineering support did not materialize and the fund-raising efforts did not allow for hiring an independent engineer.

The developer, Nicholas Heras, Jr. was successful in increasing costs by taking depositions of the ten taxpayers even after their legal counsel indicated that these depositions were not relevant to the case. His success was further assisted by the Conservation Commission taking a very limited view of their authority to restrict development, and their reliance upon the technical testimony of the developer's expert in making their decision.

While substantial arguments could have been developed to appeal the case, including taking issue with the judges higher threshold for legal standing, the ten taxpayers decided not to appeal due to the limited outside financial support that the plaintiffs received to pursue this expensive case.

Substantial individual contributions were received to pursue the case, but a sufficiently broad-based community of givers was not developed to pursue an appeal. Lastly, it was believed by the Newton Conservators that shortcomings in the decision could best be addressed by monitoring the related activities of the Conservation Commission and the City.

The Irwin Road case illustrates the need for citizens to pay more attention to appointments to the Conservation Commission and to provide sufficient funding to the Commission to allow for the City to develop independent technical reviews of projects. Substantial public documents concerning the impact of this project on the Charles River, such as the Army Corps of Engineer studies, were available but not fully utilized by the Commission during the review. Independent reviews will become more important with the increased value of land.

Parks and Conservation Lands Map Available

The Newton Conservators' Newton Park and Conservation Lands Map is available by mail from the Newton Conservators, or you can pick them up at the Newton Parks and Recreation Department and the Newton Conservation Commission Offices.

This very popular brochure has a main finder map and maps and historic information of 21 green space areas in Newton. It shows street access points, trails, woodland areas and other pertinent information. It is folded so that one area at a time can be conveniently exposed.

These maps will enhance your enjoyment of our natural spaces as you wander through them. They may also expose you to areas you might not know about. They definitely make great gifts to nature lovers.

The maps are still only \$1.00 each. If they are ordered by mail, please add \$0.75 for the handling and mailing cost of the first and \$0.50 for each additional one ordered at the same time.

Progress on the Development of Weeks Field and Park

Despite this winter's heavy snow and a "lake effect" from last fall's rain, the new and improved Weeks Field looks pretty good this spring. The turf is developing nicely, the drainage is greatly improved and the geese have apparently decided not to return. With co-operation from the weather, construction should be completed by early this summer.

The work that remains to be done on the Field and Park includes:

- Paul Street Side: Additional loam will be spread and graded to finish the drainage work that was begun last fall. This area will then be raked and seeded.
- Weeks House side: This part of the field lost some of its seed from the torrential rains last fall. It will be aerated and slice-seeded this spring to build the turf.
- Trees and Shrubs: The first trees will be planted on the berm in the center of the field shortly. Remaining trees and shrubs will be planted as completion of other work permits.
- Fences: New fencing will be installed along Hereward Road, Paul Street and the parking lot near the tennis courts. Gates will be placed at the end of Hereward Road and the opening near Browning Road. Existing fences will be repaired.
- Benches and Backstops: New benches and game tables will be installed in the center park area and game viewing area. Backstops will be placed in the corners at Hereward Road and Paul Street, as before.
- While work continues, please do not use the Field.

An orange construction fence will again be placed around the field to keep the tender grass seedlings from being trampled. Once the new grass has established itself, the field will be opened to neighbors for casual use. If you have questions or would like to discuss use of the field, please call Doug Dickson at 969-8661.

Blackburn Award Goes to Marty Sender

Last fall, the Charles River Watershed Association awarded its Anne M. Blackburn Award to Marty Sender of Auburndale, MA for his work on the harvesting of non-native aquatic plant species from the Lakes District of the Charles.

Named for the CRWA's former environmental affairs coordinator, the Blackburn award honors that individual who through exceptional effort significantly enhances, preserves, or protects the Charles River or its watershed.

Thanks to Marty and the hundreds of hours he's spent on this issue, the Lake District is now healthier, more accessible and safer, according to CRWA Executive Director Bob Zimmerman.

Sender, a former television news reporter, is currently president of Sender Communications, a media and public relations firm with offices in Newton and Boston. He also sits on the boards of the Newton Conservators, the CRWA, the Auburndale Civic Association and the Arthritis Foundation of Massachusetts.

In recent years, the Lakes District experienced an explosion of non-native plants, largely fanwort and water chestnut, in its waters. Thanks to the effort of Marty Sender and others, the state legislature appropriated over \$200,000 for weed control in the Lakes District. Last summer the MDC began that effort by harvesting over 30 acres of water chestnut between Moody Street in Waltham and the Marriott Hotel in Newton.

On receiving the award, Sender remarked that the process of cleaning up the Lakes District has only just begun and that continued funding and support of the state legislature is essential. "We're off to a good start," he said, but it's just the beginning."

Charles River Pathway

by Peter Kastner

The Newton Conservators have supported the development of the Charles River pathway for many years, believing that, once completed, it will provide the opportunity for residents to quietly enjoy Newton's most significant natural feature. Our commitment to public access to the river is long-standing and we have sponsored Charles River walks for several years to increase public awareness of the river and the pathway. Our walks have included an introduction to the Charles River Parkway by both Dan Driscoll of the MDC and William Giezentanner, the author of the 1975 City of Newton Charles River Pathway Plan. A walk around the Charles River Lake district (starting at the parking lot at Ware's Cove) on June 16 at 2:00 pm is scheduled and we would welcome individuals to join us.

Recent debates around the Charles River Pathway, stemming from a state grant to improve Allison Park, have a long history, with roots going back to at least the latter part of the 19th century, when the MDC hired Charles W. Eliot to prepare a Report upon the Opportunities for Public Open Space in the Metropolitan District of Boston. The use of the Charles River and public access was a hot topic and Eliot was well aware of the need to involve the public. He wrote:

"In pursuance of the policy of gathering all of the important facts of the case presented before drawing conclusions or making recommendations, the commissioners next instituted a prolonged series of public meetings, at which full opportunity was given to the citizens of Boston, Cambridge, Newton and Watertown to present facts, and to state their views as to the future of the river and its banks. The views, desires, and ideas set forth at these meetings were diverse and conflicting, but many solid and pertinent facts were brought out."

Eliot's plan for an urban park system caused the state in the 19th century to acquire valuable park land, including 85% of the land in Newton upon which the proposed Charles River pathway is to be built. During the MDC acquired the land in Newton, a pathway was not built.

During the 20th century the Charles River went through a serious decline. By the 1960's citizens became more aware of the recreational and environmental value of the Charles River and, in 1969, the Newton Planning Department called for the development of a Charles River Pathway. Interest in the river continued to grow and, in 1975, William Giezentanner, with a grant from the Ford Foundation and the City of Newton, published a Charles River Pathway plan that built upon the vision of Charles Eliot to establish suburban river pathways leading into the great Charles River basin. This plan was developed with the full support of the City of Newton and intersted citizen groups, such as the Newton Conservators.

Dennis L. Ditelberg, Chairman of the Conservation Commission, in submitting the 1975 plan to Mayor Mann, noted contributions and interest from "The Ford Foundation, the Newton Planning Department, members of the Conservation Commission, the Metropolitan District Commission, Aldermanic City Planning Committee, the Aldermanic Finance Committee, and the entire membership of the Board of Aldermen; Charles River Watershed Association, Inc., Newton Conservators, Inc., Newton Historic District Study Committee, Newton Upper Falls Improvement Association, American Legion Nonantum Post 440, Chestnut Hill Garden Club, Woman's Club of Newton Highlands, Upper Falls Senior Citizens Group."

The 1975 Charles River Pathway plan envisioned the development of a "major outdoor recreational resource for citizens of Newton and the surrounding communities." The 1975 plan argued for a level project, building on the MDC land, which would be sensitive to its setting and environmental value. The 1975 plan has been incorporated into the City of Newton's Recreation and Open Space and Capital spending plans. As a result of the 1975 plan, specific parcels or easements have been acquired to fill in selected sections that were not already in public hands.

Respect for the rights of property owners is a long-standing principle, and it is therefore no surprise that, as we get closer to implementing the MDC's plan, public concerns continue to grow, regardless of the numerous public meetings held to review this project.

From our vantage point, planning has gone on for over 100 years, and the current opportunity to carry out the vision of a forty-mile urban river pathway is a rare opportunity to improve the quality of our immediate natural environment. As time passes, it becomes more difficult to provide public access to the river and care is being taken to develop a simple foot path which will have a minimal impact upon the environment.

The process between the public and private interests has been open and, as noted by Charles W. Eliot many years ago, "The views, desires, and ideas set forth at these meetings were diverse and conflicting, but many solid and pertinent facts were brought out."

It is the responsibility of all parties to respond to views and concerns that have been developed at public meetings. The MDC has worked hard to involve many diverse groups throughout this process and we trust that our citizens and public officials have learned to work together and that Newton has the will and the talent to resolve these concerns and leave to future generations the opportunity to walk along the length of the Charles River as it meanders through the city.

Membership

by Deborah Dyer, Membership Committee

It is you, the members of the Newton Conservators, who enable us to continue so many worthwhile projects. Without you, we could be ineffective. With this in mind, we want to expand our membership and ask that you all join us in the effort. Please consider asking a neighbor or a friend to join the Newton Conservators--invite them to Annual Meeting, give them a map, or a copy of this Newsletter.

Early in February, we mailed a large membership appeal to non-members. The Charles River Watershed Association and the Newton Garden Clubs were of great assistance in enabling us to target our letters to a receptive group of residents.

We would like to express our sincere and special appreciation to Andrea Plate of the Charles River Watershed Association and Fiora Houghteling of the Newtonville Garden Club for their kind assistance in the project.

Cigar Box Treasures Turn into History

There will be a book signing party at Nahantton Park in June.
For more information or to order the book, contact Mary Brown or Judy Dore at Newton Parks and Recreation Department, 552-7120.

You are invited to join the Newton Conservators!

____ New Member
____ Renewal

Name: _____

Address: _____

Phone: _____

Please make check payable to:
Newton Conservators, Inc.
Individual \$10.00 _____
Send to: Sustaining \$25.00 _____
Membership Chairman Family \$15.00 _____
Newton Conservators, Inc. Patron \$100.00 _____
P.O. Box 11 Additional _____
Newton Centre, MA 02159 Contribution _____
Total _____
Dues and Contributions are tax-deductible

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6:30 pm
Noyes Hall, Andover Newton Theological School