



Municipal Client Advisory
January 2009

**SEIDEMAN V. NEWTON: LIMITING THE SCOPE OF THE COMMUNITY
PRESERVATION ACT**

The Community Preservation Act (“CPA”), a local option statute enacted by the Legislature in 2000, is a mechanism for allowing municipalities to maintain their character and natural resources. By accepting the CPA, municipalities may approve a surcharge of up to three (3%) of the real estate tax levy against real property for purposes of the CPA.

The CPA is explicit in the purposes for which CPA funds may be allocated: “for the acquisition, creation and preservation of open space”; “for the acquisition, preservation, rehabilitation and restoration of historic resources”; “for the acquisition, creation and preservation of land for recreational use”; “for the acquisition, creation, preservation and support of community housing”; and “for the rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created as provided in this section.” M.G.L. c. 44B, § 5(b).

However, the precise interpretation of permissible uses of CPA funds effectively remained an open issue until Seideman v. Newton, 452 Mass. 472 (2008):

- In Seideman, the City of Newton allocated CPA funds towards improvement projects at Stearns Park and Pellegrini Park. Collectively, these parks included passive and active recreation areas, such as an open space with benches, game tables, and walkways, a basketball court, a baseball diamond, playground equipment, tennis courts, indoor volleyball, and ball fields. The acquisition of both of these parks pre-dated Newton’s acceptance of the CPA.
- Newton sought to enhance the appearance of these existing parks by rearranging existing park facilities; assembling playground structures together; moving and reconfiguring the basketball courts; adding landscaping; constructing new fencing, paths, bleachers, and a tennis court; putting in water fountains, lighting, signage and picnic tables; and maintaining the ball fields.



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- Ten (10) taxpayers commenced a lawsuit pursuant to M.G.L. c. 40, § 53 seeking to restrain the proposed expenditure of \$765,825 in CPA funds for these park projects.
- The Supreme Judicial Court upheld the grant of summary judgment to the plaintiff taxpayers by a lower court. The Supreme Judicial Court focused upon the interpretation of M.G.L. c. 44B, § 5(b) and, in particular, the term “creation” as used in the phrase “for the acquisition, creation and preservation of land for recreational use.” Newton contended that “creation” not only applied to creating physical land for a park, but also to creating new recreational uses within an existing park, particularly where additional classes of users would benefit. Newton also characterized the projects as the preservation of land for recreational use, rather than simple maintenance, because it would prevent the destruction of existing park land.
- Applying the rules of statutory construction, the Supreme Judicial Court held that the CPA applied to the creation of land for recreational use, not the creation of new recreational uses on existing land already dedicated to a recreational use. Therefore, a municipality could not use CPA funds to improve or redevelop existing recreational land. On the other hand, a municipality could apply CPA funds towards converting non-recreational land into recreational land or reviving land that ceased to be used for a recreational purpose.
- The Supreme Judicial Court also viewed Newton’s proposed projects as enhancements and improvements to its parks. These projects did not constitute “preservation,” a term defined by the CPA as the “protection of . . . real property from injury, harm or destruction.” M.G.L. c. 44B, § 2. Thus, the Supreme Judicial Court distinguished “decay and destruction,” which clearly constitute “preservation,” from enhancing “the parks’ overall quality, attractiveness, and usage.”
- The proposed projects did constitute “rehabilitation,” a term defined by the CPA as “the remodeling, reconstruction and making of extraordinary repairs.” M.G.L. c. 44B, § 2. However, the Supreme Judicial Court held that CPA funds could not be used because the parks were not initially acquired or created with CPA funds. Rather, the parks pre-dated



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Newton's acceptance of the CPA and "rehabilitation" was limited to land for recreational uses acquired or created with CPA at the outset.

Other aspects of the limits upon CPA expenditures remain open to various interpretations, and the Court observed that the "recreational use" provisions contain some limiting language which does not appear elsewhere. However, it is now clear that CPA funds may be used to improve recreational areas only if they were acquired or created with CPA funds.