



***Land Use Law  
Round-Up***  
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### **SJC Strikes Down Use of Community Preservation Act Funds for Municipal Park Improvements**

The state Supreme Judicial Court today issued a landmark ruling interpreting the scope of the Community Preservation Act, a law enacted in 2000 that provides cities and towns state matching funds for the creation and preservation of open space, historical resources and affordable housing.

In Seideman v. City of Newton, the Court considered whether Newton's \$700,000 appropriation of CPA funds, designated for improvements at two municipal parks, constituted a lawful expenditure of those funds under state law. Ten Newton taxpayers challenged the appropriation as exceeding the scope of permissible expenditures under Section 5 of the Act, which limits the use of CPA funds for the restoration or rehabilitation of open space and recreational land to such resources that were originally "acquired" or "created" with CPA funds. The Court held that the Newton parks in question were not "acquired" or "created" with CPA funds (they pre-dated the enactment of the CPA), and therefore CPA funds could not be used to improve the parks. The Court squarely rejected the City's argument had the term "create" should be construed broadly, to include not only the creation of new recreational areas, but also the creation of new recreational uses or amenities within existing parks. In its decision, the Court noted that CPA funds could be used to build new recreational areas on land the City already owns, but which is currently being used for different purposes.

Many cities and towns have been spending CPA funds to restore or improve existing open space and recreational land. In a footnote, the Court noted that existing projects that have violated this spending restriction may not necessarily be in trouble; ten taxpayer suits must be brought before legal obligations are incurred by municipalities.

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