

CITY OF NEWTON

IN BOARD OF ALDERMEN

FINANCE COMMITTEE REPORT

WEDNESDAY, OCTOBER 16, 2013

Present: Ald. Gentile (Chairman), Ciccone, Salvucci, Rice, Blazar, Fuller and Lappin

Absent: Ald. Linsky

Also present: Maureen Lemieux (Chief Financial Officer), Dori Zaleznik (Commissioner of Health and Human Services), and Jennifer O'Leary (Youth Services Director; Health and Human Services Department)

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

#102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK, AND CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]

**ZONING & PLANNING APPROVED 6-0 on 6/10/13**

**ACTION:** **HELD 6-0 (Rice not voting)**

**NOTE:** See the below note for Docket Item #95-11 the discussion of the above item.

**REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES**

#95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]

**ZONING & PLANNING APPROVED 6-0 on 6/10/13**

**ACTION:** **HELD 6-0 (Rice not voting)**

**NOTE:** The above docket item and Docket Item #102-11 were discussed in conjunction as they are closely related. The Zoning and Planning Committee approved both items in June 2013, after being referred back because the Finance Committee had concerns with the proposed ordinance language. The June 10, 2013 Zoning and Planning Committee Report and the Planning Department memo were attached to agenda

The Newton land use attorneys were informed of the proposed amendments related to condominium conversions earlier today at the request of the Chairman. Attorney Laurance Lee and Attorney Peter Harrington attended the meeting and voiced concerns with the proposed ordinance. Both attorneys stated that they were unaware that the ordinance amendment was being proposed. Attorney Lee stated that he has concerns with the proposed procedural process because the proposed amendment allows mistakes to take place by recording the condominium documents first and then having Inspectional Services Department inspect the condominium(s). If there were problems with the inspection, the owner would have to redo all their documents and rerecord. In addition, if a person is unaware there is the potential that a sale could take place and a deed recorded which would result in a legal mess. Attorney Harrington provided the attached comments on the proposed ordinance.

The Committee Chairman reiterated his concern that condominiums would be inspected for health and safety but single and multi-family residents would not be inspected. If the City is going to inspect condominiums, it should inspect all residential units. Other members of the Committee shared the Chairman's concern.

Commissioner of Health and Human Services Dori Zaleznik reminded the Committee that there is currently an ordinance that requires that whenever an apartment or room in a lodging house is vacated or when an area in an existing building is converted to a condominium that the Health Department do a health and safety inspection. The certification of inspection for apartments and rooms are only required once within a twenty-four month period and condominium units are only certified at the time of conversion. However, the Health and Human Services Department has no way of knowing when an apartment is vacated or there is a condominium conversion. The Commissioner would like to see the ordinances amended to remove the inspection requirement, as there is no way to enforce the inspection requirements. There is already a backlog in the Inspectional Services Department and the new ordinance may place an undue burden on the Inspectional Services Department.

There were concerns that the ordinance requires condominium owners to file a copy of the condominium master deed with the City. The Chairman was concerned because, basically, the City is signing off that everything is in compliance and if the master deed were incorrect, the buyer would have recourse against the City. The Committee felt that it was appropriate to hold the item for additional discussion. In addition, holding the item would allow other land use attorneys opportunity to comment on the proposed ordinance. With that, Ald. Blazar moved hold, which carried unanimously. The Chairman will meet with the Chairman of the Zoning and Planning Committee to discuss the issues that the Finance Committee raised

#41-11(2)     ALD. CICCONE requesting implementation of the fees associated with the Winter Overnight Parking Pilot Program. [09/19/13 @ 3:49 PM]

**ACTION:**     **HELD 6-0 (Rice not voting)**

**NOTE:**       As Winter Overnight Parking Pilot Program has not been established, the request for the implementation of fees is not ready to be discussed. Ald. Ciccone moved hold on the item, which carried unanimously

#327-13       HIS HONOR THE MAYOR requesting acceptance and expenditure of a ten thousand dollar (\$10,000) grant from the Community Health Network Area (CHNA) 18 for the purpose of creating a program to address youth stress. The grant is to be administered through the Health and Human Services Department. [09/30/13 @ 4:10 PM]

**ACTION:**     **APPROVED 7-0**

**NOTE:**       Health and Human Services Commissioner Dori Zaleznik and Youth Services Director Jennifer O'Leary presented the request to expend a \$10,000 grant to be used to start a program to address youth stress in the City. The program will target youths at the high school level. The Health and Human Services Department will hire an intern for the program, which will be funded through the grant. The grant funds will also be used to provide funding for presentations, social media, transportation, supplies, and marketing.

The Committee suggested that whoever is administering the grant carefully monitor the State requirements for reporting. Jennifer O'Leary will be the grant administrator and she has experience with handling both State and Federal grants.

Ald. Ciccone moved approval, which carried unanimously.

#328-13      HIS HONOR THE MAYOR requesting acceptance and expenditure of a two thousand five hundred dollar (\$2,500) grant from the Massachusetts Clean Energy Center for Solarize Newton Marketing Outreach Services for the purpose of paying a consultant of the Public Buildings Department. [09/30/13 @ 4:10 PM]

**ACTION:**      **APPROVED 7-0**

**NOTE:**      Chief Financial Officer Maureen Lemieux presented the request to expend a \$2,500 grant received from the Massachusetts Clean Energy Center. The purpose of the grant was to market solar power to the citizens of Newton. The grant funds will be used to reimburse the Public Buildings Department for the costs incurred for the work done by the consultant that was hired in connection with the marketing program.

Ald. Fuller moved approval, which carried by a vote of seven in favor and none opposed.

#329-13      HIS HONOR THE MAYOR requesting authorization to transfer the sum of seven thousand four hundred forty-four dollars and ninety-nine cents (\$7,444.99) from Budget Reserve to the Law Department's Judgments and Settlements Account to be used as full and final settlement of a claim for damages filed against the City as a result of property damaged caused by a City of Newton work crew. [09/30/13 @ 4:10 PM]

**ACTION:**      **APPROVED 7-0**

**NOTE:**      Chief Financial Officer Maureen Lemieux stated that the City is clearly at fault for the flooding of a basement on Fessenden Street. A City work crew cut water service to the property before they began replacement of a water service line. However, they turned the water service back on before work was completed, which flooded the basement. The property owners' insurance company has filed a claim seeking \$7,444.99 from the City. It has been determined that the City would likely be found liable for the damages; therefore, the Mayor is requesting Board of Aldermen authorization to settle a claim over \$5,000 and transfer \$7,444.99 from the Enterprise budget to the Law Department.

Ald. Ciccone moved approval, which carried unanimously.

#15-13      FINANCIAL AUDIT ADVISORY COMMITTEE requesting review and acceptance of the revised City of Newton Investment Policy. [12/18/12 @ 9:31 AM]

**ACTION:**      **HELD 7-0**

**NOTE:**      The Committee held the item without discussion.

**Chairman's Note:** The attached e-mail provides an update on the Craft Street Garage Roof and Masonry Project. The Board of Aldermen approved \$260,000 in the spring of 2012 for masonry

repairs and the design of the new roof. During the design of the roof, it was determined that the roof would last seven to 10 years with approximately \$20,000 worth of repairs. Therefore, the project will only utilize \$100,000 of the appropriated funds for the roof repairs and masonry work. The appropriated unused funds will be turned back for re-appropriation at the completion of the project. In addition, the \$610,000 for the Craft Street Garage roof replacement in the FY15 Capital Improvement Plan (CIP) can be removed from the CIP.

The Comptroller suggested that the Commissioner of Public Buildings contact the Chairs of the Finance Committee and Public Facilities Committee to determine whether the change needed to go back to the committees. Neither Chairman felt it was necessary for the item to come back to the board, as it would further delay the necessary masonry and roof repairs. In addition, the repairs are building envelope work, which is within the confines of the original Board Order.

The Committee adjourned at 7:45 PM and all other items before the Committee were held without discussion. Draft Board Orders for the above items that are recommended for Board of Aldermen action are attached.

Respectfully submitted,

Leonard J. Gentile, Chairman

**TEXT**

1. Insert the following new Chapter 5, Section 22 into Chapter 5, Buildings, Article II, Inspectional Services Department. This creates a requirement for an inspection for Code compliance ~~after~~ prior to the creation of a condominium under Massachusetts General Laws creation with associated fees and penalties.

Chapter 5, Section 22, Inspection of Condominiums

(a) Purpose: The intent of this regulation is to ensure the health and safety of occupants in dwellings converted to condominium ownership (hereinafter called "Condominium") and to ensure compliance with applicable state and local codes, ordinances and regulations related to building, health and safety requirements.

(b) The provisions of this section shall apply to any structure which has been used in whole or in part for residential purposes, and which is converted to condominium after the effective date of this section.

(c) Prior to ~~or within forty-eight hours after~~ the recording of a master deed under G.L. c. 183A in the registry of deeds, ~~but in any event and~~ prior to the initial sale of the first unit, the owner or owners who create a condominium shall obtain, from the ~~commissioner~~ Commissioner of ~~inspectional~~ Inspectional services ~~Services~~, a certificate of condominium inspection. The owner(s) shall apply for such certificate on such form as the commissioner may provide, shall list each unit, and shall provide a copy of the ~~master deed~~ Site Plan & unit plans. The application notice shall be accompanied by the inspection fee required in 5-22(f) below.

(d) Within five (5) days after a completed application for condominium inspection is filed, the commissioner or his designee shall inspect the property and shall issue such certificate if he determines that the subject property and each subject unit therein is in compliance with applicable state and local codes, ordinances, and regulations related to building, health and safety requirements.

(e) The ~~C~~ommissioner of ~~i~~nspectional ~~S~~ervices shall be responsible for enforcing the provisions of Section 5-22 and may issue orders, promulgate regulations, and create procedures necessary for achieving the purpose in 5-22(a).

(f) The commissioner of inspectional services shall charge an inspection fee of one hundred dollars (\$100.00) per condominium unit in order to defray the city's costs of conducting inspections under this section.

(g) Any owner who converts property in violation of section 5-22 or in violation of any order or regulation issued by the commissioner pursuant to section 5-22 shall be punished by a fine of not more than three hundred dollars. Each unit converted in violation of this section ~~and each day of continued violation for each unit shall constitute a separate offense~~.

(h) A certificate of condominium inspection shall be in addition to and not a replacement for any other regulatory requirement which may be applicable by law, ordinance, or regulation.

**Sullivan Shawna**

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*To:* ssullivan@newtonma.gov, rbblazar@yahoo.com, asalvucci@rcn.com  
*Subject:* Propod ordinance  
*From:* Pfh <pfh@aol.com>  
*Date sent:* Thu, 17 Oct 2013 16:04:31 -0400 (EDT)

To: Ald. Leonard J. Gentile  
From: Peter F. Harrington

After further consideration of the question of the proposed ordinance to regulate condominiums, I have some additional comments.

1. Your concern about the City's responsibility is an important point and also raises the question of the authority of the City to enact such an Ordinance. A condominium is a form of ownership of land, or an interest in real estate, as is joint tenancy and tenants in common. It was created by the statute and, notwithstanding the Home Rule Amendment [Article LXXXIX of the Massachusetts Constitution], it may not be within the power of a municipal legislative body to amend or alter the terms and conditions of ownership. It is not, as many believe, a type of building, apartment or real estate. I am sure that there are arguments for and against, but, I would advise a conservative approach to the question.
2. As a lease sets forth the rights of a lessee, condominium documents describe the rights of the condominium owner. The statute sets forth certain rights, conditions and obligations that must be included. The proposed ordinance may be interpreted as an attempt to add conditions to the condominium statute.
3. When a condominium is created, the Declarant must file a set of plans drawn by a professional. Each of the plans must be certified that it "fully and accurately depicts the layout, location, unit number and dimensions of the units as built." There is no requirement that they provide information about life safety issues. Again, the question arises, "Does a municipality have the authority to modify the statutory requirements or is a municipal ordinance merely a local requirement under the municipal police power and, if so, into what category does the ordinance fall under?" It is not a zoning ordinance. It is a required review for conformity to the Massachusetts Building Code, but it is not an amendment to the building Code. A violation is a crime, as it punishable by a fine.
4. Other questions are, "Should a change of ownership trigger a requirement to upgrade residential property to conform to the most recent changes in a Building Code. If so, why not apply this requirement to all residential property?" How will such a requirement interface with the Historic Commission's authority in historic districts and historic buildings?
5. A town is required to submit proposed By-Laws to the Attorney General for review and approval. I do not know if the Attorney General will extend that service to municipalities. If so, you might ask for an opinion on the ability of Newton to adopt such an ordinance.
6. If such an ordinance is to be adopted, it should be clear and specific that it applies to the review of building plans only; not the condominium documents, not the site plan.
7. If the Board were inclined to go forward with this proposal, I suggest you consider converting it to a Resolution to the General Court asking that chapter 40A be revised to include a such a requirement or to allow Newton to adopt such a requirement. I am sure our State Legislators' input would be helpful in crafting such a Resolution.
8. There is a condominium conversion statute. It may be that there is some authority in that law that will allow the City of Newton to enact it's own regulatory requirements.

*Peter F. Harrington*

Harrington & Harrington

505 Waltham Street

Newton, MA 02465

617-558-7722 tel

617-527-4763 fax

CITY OF NEWTON  
IN BOARD OF ALDERMEN

2013

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the authorization to expend a grant from the Community Health Network Area (CHNA) 18 in the amount of ten thousand dollars (\$10,000) to be administered by the Health and Human Services Department to be used to create a program to address youth street be and is hereby approved.

Under Suspension of Rules  
Readings Waived and Approved

(SGD) DAVID A. OLSON  
City Clerk

(SGD) SETTI D. WARREN  
Mayor

Date \_\_\_\_\_



CITY OF NEWTON  
IN BOARD OF ALDERMEN

2013

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chairman Leonard J. Gentile, the authorization to expend a grant from the Massachusetts Clean Energy Center for Solarize Newton Marketing Outreach Services in the amount of two thousand five hundred dollars (\$2,500) to be used to hire a solar coach consultant be and is hereby approved.

Under Suspension of Rules  
Readings Waived and Approved

(SGD) DAVID A. OLSON  
City Clerk

(SGD) SETTI D. WARREN  
Mayor

Date \_\_\_\_\_

CITY OF NEWTON

IN BOARD OF ALDERMEN

2013

ORDERED:

That in accordance with the recommendation of the Finance Committee through its Chairman, Alderman Leonard J. Gentile, a transfer of funds in the sum of seven thousand four hundred forty-four dollars and ninety-nine cents (\$7,444.99) from the Water Fund Operating Budget Reserve account to the Settlements and Judgments account in the Law Department be and is hereby approved as follows:

FROM:	Water Fund Operating Reserve	
	(28A10498-5790) .....	\$7,444.99
TO:	Legal Claims & Settlements	
	(28A10893-5725).....	\$7,444.99

FURTHER ORDERED:

That the City Solicitor is hereby authorized to expend the sum of seven thousand four hundred forty-four dollars and ninety-nine cents (\$7,444.99) from the Law Department's Judgments and Settlements Account for the purpose of making full and final settlement of a civil claim filed against the City as a result of a collision between a City owned backhoe and a private vehicle.

Under Suspension of Rules  
Readings Waived and Approved

(SGD) DAVID A. OLSON  
City Clerk

(SGD) SETTI D. WARREN  
Mayor

Date \_\_\_\_\_

-----Original Message-----

From: Joshua Morse <[morsejoshua@yahoo.com](mailto:morsejoshua@yahoo.com)>

To: Lenny Gentile <[lennypmgi@aol.com](mailto:lennypmgi@aol.com)>; Anthony Salvucci <[asalvucci@rcn.com](mailto:asalvucci@rcn.com)>

Sent: Tue, Oct 8, 2013 1:05 pm

Subject: Craft Street Garage Roof and Masonry

I wanted to reach out to both of you to give you an update on the Craft Street Roof and Masonry Project. Last spring, the BOA approved \$260K for the design of the roof replacement, and design and construction funds for the repairs to the masonry damage from settling.

We had said that we would evaluate the masonry issue and if the settling was complete, and there were no current structural concerns, that we would not go overboard with the repairs. The good news is that our structural engineer has determined that the settling is complete, and it poses no threat to personnel or further building damage. This puts the repair costs at less than \$50K.

At the same time, we completed the design of the roof replacement. The original plan was to come in for \$610K in FY15 to fund the roof replacement. In doing the design we determined that we could get another 7-10 years out of the roof with some modest repairs and removal of some trees and branches growing over the roof. We just got the bids in for the needed repairs and the low bid was appx \$16K.

We would like to utilize the money approved for the design and construction of the masonry, and the design of the roof, to complete this work. The \$610K for the roof replacement would be taken off of the CIP, and the roof replacement plans would be shelved until the roof needs to be replaced.

I spoke with Dave Wilkinson, and he suggested that I just update you both and see if this needs to go back to committee for an official vote. The bottom line is that we are able to address both critical building needs for appx \$100K, as opposed to a total investment of \$870K that was originally planned for. They are both building envelope work so doing this within the confines of the board order seemed like a possibility. That said, we were hoping to be able to complete this work in the coming weeks, and then turn back the remainder of the funds for re-appropriation.

Please let me know what you both think.

Regards,

Josh Morse  
Interim Public Buildings Commissioner  
Public Buildings Department  
City of Newton