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Malcolm Lucas
Housing Planner

Members

Esther Schlorholtz, Chair
Donna Rigg, Vice-Chair
Judy Korzenowski
Josephine McNeil
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CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

MEETING MINUTES

Date: January 3, 2024

Time: 8:30 a.m.

Place: Virtual (Zoom)

Members Present: Esther Schlorholtz, Chair

Donna Rigg, Vice Chair

Judy Korzenowski

Josephine McNeil

Tatjana Meschede

Steve West

Alex Weiffenbach

Members Absent:

Staff Present:

Malcolm Lucas, Housing Planner

Jini Fairley, ADA/Sec. 504 Coordinator

Lara Kritzer, Director of Housing and Community
Development

Shaylyn Davis-Iannaco

Public Present:

Sharyn Roberts, League of Women Voters Newton

Amy Dain, Dain Research

Steve Burnham

Julia Malakie, Council

Andreae Downs, Council

Malcolm Lucas, Housing Planner served as recorder, Esther Schlorholtz, Chair, called the meeting to order at 8:30 a.m.

To view meeting documents, [click here](#).

1. Approval of December 2023 minutes

- Upon a motion by TM, SW seconded the motion. The December 2023 minutes were approved 6-1-0, with 1 abstention, with planning



making the correction from “our committee” to the Lottery & Lease ups Sub-committee in section 5 of the minutes, TM recommended.

2. Fair Housing for Real Estate Professionals Training

- ES noted the upcoming fair housing training for real estate professionals with Attorney Kelly Viera at Suffolk Law on January 17. She thanked JK for promoting the event and ML for helping with the invitation process. She said that LK, JF and she met to discuss the future process of collecting RSVPs for training and other committee events, and that Planning proposes to have the City manage it going forward. JM stated that she would forward the information to Greg Reibman, Chamber Real Estate Group.

3. Exclusion By Design Report with Amy Dain

- TM introduced Amy Dain who is an independent consultant on public policy and focuses on urban and suburban planning. She has deep expertise on zoning in Massachusetts and has extensive experience with many policies and think tank entities in the state. AD published a study in 2019 on the state of zoning and multi-family housing in Greater Boston. AD is invited today to speak with the FHC about her latest work on exclusionary actions taken by Massachusetts communities that was prepared for Boston Indicators as a part of The Boston Foundation this past November 2023, called *Exclusionary by Design*. See [presentation](#).
- AD thanked TM and stated that she is from Newton, MA. She gave some background on what she does, including growing up in the City, serving on the planning board and on the board of the arts and cultural organization, Newton Community Pride. She stated that her presentation will focus on a subset of her larger study, the history of zoning that covers 100 years of zoning history. She will present her investigation into zoning’s purposes in the 1970s in Massachusetts. In the early 1970s most of the Boston suburbs voted to eliminate apartment zoning or highly restrict it. This raised a question for her why this happened and was the impetus for her research.
- She explained that during the two decades before the 1970s, the supporters of zoning for apartments identified the need for housing, and cited the fiscal benefits, including more tax revenues and fewer children living in apartments that would not add to school costs. Those opposed were concerned about socio-economic and class status of their communities, with one community saying that apartments were “ultimately going to take the town down a notch” and would affect the social ranking of the community in the metropolitan area. During this time, municipal plans were explicit that zoning was considered a tool for recruiting and retaining wealthy people and for discouraging lower income people.
- AD reviewed her research using original documents on local planning, master plans and housing plans for cities and town throughout Massachusetts, including more than 100 in the metropolitan area. Newton was part of the study. There were a number of communities in the mid-century era that considered the pros and cons and decided to ban apartments completely or almost completely. Weston, Carlisle, Dover, Duxbury, Wenham and other municipalities made up an “executive belt” of a state zoning policy. These communities figured they could forego the fiscal benefits of apartments for the sake of economic and social status.

- AD continued to go over dates and the history of zoning and racism. She said that many communities banned apartments, but that more cities and towns allowed them in the mid-century, primarily for fiscal reasons, than banned them. She said that Newton allowed apartments, and many were built, including one where she lived. She described “the Big Downzone” in the early 1970s, especially 1972 and 1973, when most communities voted to ban apartments. This was a remarkable level of concerted action, requiring major votes by cities and towns. In Newton, she said it was a bit different and described a slowdown of permitting that reduced the number of apartments, but which was not an explicit vote to ban apartments or down-zone. This was a significant shift in Newton’s policies, with permitting approvals apparently becoming more controlled and discretionary. In fact, permitting approvals dropped in subsequent years.
- She reviewed reasons for the Big Downzone in the whole municipal region that happened almost all at once, including the environmental movement, anti-growth, anti-highway expansion and growth pains resulting from rapid growth in the metropolitan area. She said that these issues were important but said that if these growth pains were the cause, cities and towns could have used “smart growth” policies, which were available to them at the time, to manage growth effectively. Instead, they chose to ban apartments everywhere, even though there were fiscal benefits to having them. She said that class elitism played a key role. She said that racism played a very significant role. She noted the historical context that the 1960s were a time of racial change, civil rights victories and calls for desegregation in schools and neighborhoods. She said this was the time of the Selma marches and when Martin Luther King came to Boston speaking out about segregation in the north as a new form of slavery. She gave the example of Weston to illustrate its actions. Weston was 99% white and mostly affluent. In 1965, Weston banned apartments. Among their stated goals, the City included a “Social Goal: Accommodate further moderate population growth in a manner consistent with the present characteristics of Weston.”
- AD focused on the issue of racism and its key role in the Big Downzone. She stated that many Black people in the 1960s and 1970s moved to Boston for opportunity. She stated that many of them were looking for apartments. In Boston the region's racial characteristics were changing, urban areas were diversifying, and most suburbs were 99% white. The movement organized persistent calls for desegregation, for diverse housing for diverse people across the suburbs. In 1968, the City of Newton’s housing report called out racism and said: “Inherent in the controversy, but not often openly articulated, is the notion that to open a community’s low-income housing developments to other than local residents signals a major influx of black families fleeing the oppressive conditions of the core City ghettos.” In 1968, after the assassination of Martin Luther King, Congress passed the federal Fair Housing Act of 1968. Civil rights leaders understood the central need for housing as part of civil rights and desegregation. In the following years, Newton, and many other communities, organized efforts to promote civil rights and desegregation, many led by clergy. In the 1970s busing became a major source of conflict, with the Boston School Committee’s meeting minutes showing explicit racism and legal action requiring desegregation of Black schools. There was significant white flight from Boston’s neighborhoods into surrounding communities. Ultimately this white flight affected zoning and permitting policies in suburbs.
- AD said that zoning policy and its role in segregation is complex and difficult to explain to broad audiences how it affects segregation. She described her original source research from the early 1970s on the State legislature’s efforts to require local policy growth statements, which she said were designed to be conciliatory to promote growth and change in cities and

towns. Each community's committee had to work to make recommendations to the State. She said it was most instructive how local communities explained the motivations for their Big Downzone policies. She said no-growth policies, income and class status policies were consistently cited, but not race. She gave examples from Quincy, Melrose, Milton, Belmont and others that explicitly sought to preserve and protect their "unique characteristics." Belmont's plan said, "This town will remain a relatively expensive place to live and so will attract only those families so economically situated."-She highlighted Needham's Local Growth Policy that said, "Needham's goals may be defined as preventing major changes to the physical character of the community as a whole." However, AD found an appendix to this statement which said that the Growth Policy Committee did not agree with "the efforts of certain members of the Congregational Church of Needham and does not represent the consensus opinion of the committee nor is said appendix endorsed by the Growth and Policy Committee." The appendix to which the committee objected said, "The moral and human costs of segregation are intolerable. Opening up our town and others like ours is in the interest of all citizens... We picture Needham offering a broad spectrum of housing, from multiple-family dwellings to single-family homes of various sizes and values so that it may have a more heterogeneous population." These examples of growth plans suggested that new housing should serve existing residents and employees and should not be for outsiders. They offer many insight into the exclusionary motivations for the Big Downzone.

- Newton was one of the communities whose goals specified the need for the development of varied densities of housing and the commitment of the City to achieve numbers of units to meet projected demand, in addition to statements about working to achieve integration. Newton was among the minority of communities that said it supported integration, including Scituate and Lexington. AD said that the votes (by aldermen) for housing were not there even when the official statements supported it.
- AD said that at this time there were loud, organized, and persistent calls for desegregation, but that because of the context of what was occurring in urban areas and the changing racial characteristics, suburbs mobilized tools of public policy and laws to maintain the highly segregated status quo. She said that plan after plan stated that new housing should be for current residents and employees, and not for outsiders. She said that her assessment of the history of exclusionary zoning was not primarily about protecting the environment, managing traffic or local budgets, but for reasons of social elitism and racism. She said the laws and policies were designed to protect the advantages of insiders of suburbs, that were generally 99% white. This restricted access to numerous resources available in suburban communities. She said that this was all done in the context of the Fair Housing Act which explicitly prohibited this discriminatory behavior. The actions of cities and towns created areas of concentrated wealth and areas of concentrated poverty in the metropolitan area. The zoning undermined social mobility and opportunity. AD highlighted that the Big Downzone also led directly to the severe housing shortage, high housing costs and segregated wealth patterns in the Boston metropolitan area. AD said that she covered more history and examples in her report, *Exclusionary by Design*. She thanked the committee for its work on these important issues and opened the meeting for questions from the FHC.
- ES asked is it possible that based on disparate impact analysis of communities in response to the MBTA Communities Act, could there be a class action suit that could be brought based on disparate impact results in communities. She said that disparate impact analysis does not require identification of motivation. AD stated that she is not a lawyer but from a historical perspective it is important to look at motivations, because it impacts what kind of

interventions in public policy will work. She said that over decades, fiscal concerns were identified particularly, but that after 1976, it became taboo to identify that a community was using zoning for “class sorting.” Because communities continued to identify fiscal growth as their primary concern over the years, the state established other interventions like Chapter 40R which paid communities based on additional student costs resulting from new apartments. This had limited effectiveness. She acknowledged that pieces of the overall picture can be explained by fiscal, environmental and traffic impacts, but there is still an unspoken issue of socio-economic and race status that exists. She said she is glad there is a taboo on people explicitly saying they want to keep out poor people and people of color, but it is important to address these forms of discrimination. She agreed that disparate impact does not require identification of motivation. She cited examples of disparate impact resulting from local actions related to families with children, age restricted housing, and lower bedroom requirements. She said that developers understand that the approval process is discretionary and that they will get better results in the permitting process if they create fewer bedrooms. She noted that this concern correlates with discrimination against Black households which tend to rent at higher rates and have larger average household sizes. She said that this results in disparate impact by race. AD said that there may be legal and court interventions that are required. She said that the history of zoning restrictions shows the need for stronger action by the state because the local community governance does not generally support diversification. ES stated that she worked in banking for almost 30 years and the concept of disparate impact is that the legal analysis does not have to get to motivation, it goes to what is the impact. This resulted in a sea change effect on banks and how they've lent to protected classes. She said that it is a very important and valuable tool.

- SW said that since the Big Downzone and partly because of social pressure, those opposed to inclusionary zoning and multi-family housing haven't needed to be careful about identifying racism or classism because the status quo is in their favor. They have been winning in terms of slowing down or preventing new housing. He said that those opposed to more housing know that talking about race is not acceptable and keep that hidden. At the same time, he has heard people say that they do not want poor people to move into Newton because it will affect their property values, and noted correlations between race, class, and income. He asked whether the requirement to respond to the MBTA Communities Act is forcing more open discussions on racism and classism. AD acknowledged SW's comments saying she plans to examine official deliberations on developments and permitting more closely related to zoning and multi-family housing, including for MBTA Communities. She noted that Katie Einstein at Boston University has been researching deliberations on zoning and permitting for the past five years and acknowledged her valuable research. She discussed that in suburban communities, those that attend zoning and permitting meetings (“neighborhood defenders”) tend to be homeowners, white, wealthier, and older than the metropolitan area population. This population tends to identify traffic and parking first as the reasons for opposition. She said that it is important to acknowledge racism (even though she prefers that it continue to be unacceptable to be racist) and to consider the kind of policies and actions at state and federal levels as well as court actions that could be taken to address discrimination.
- JM asked about the influence of the state's affordable housing law, Chapter 40B, and its influence on desegregation in suburbs. AD said that 40B is very important in the history of zoning and permitting in the state. It was adopted in 1969, with general recognition that housing was a central aspect of segregation and that zoning changes could reduce segregation. She discussed the background of why this law passed despite its requirements that every City and town achieve at least 10% affordability of its housing stock, and therefore,

requiring suburban communities to open up their communities to low-income people. She said that during this time, the City of Boston was required by law to desegregate its primarily Black schools, but that primarily white schools in suburban communities were not required to desegregate. Boston had a higher number of legislators at the time than they do today, and they voted for 40B essentially to make suburban communities be affected too by legal action in Boston as a form of retaliation. She also noted that liberal proponents of desegregation in the legislature joined with Boston legislators to pass the law. AD said that 40B has had a huge impact on housing production, leading to thousands of units being built that otherwise probably would not have been built. She described an example from the early 1970s in Newton, led by clergy and the City, to propose building 500 affordable units in 10 projects. She said the proposals were rejected by the aldermen, which then led to the state holding 42 hearings. She said this opposition exhausted the nonprofit's resources and, in the end, only 50 units were built.

- JM discussed the demographics in Newton and other suburban communities that include a small number of Blacks. She asked why AD focused her research on Blacks. She asked how focusing on small Black populations in suburbs would play into a legal disparate impact action in Newton. She noted as an aside that this is why the FHC needs a civil rights attorney on the committee. She also said that poverty in Newton must be highlighted, regardless of race. She noted that she believes the MBTA Communities Act will not directly increase the number of poor and people of color. AD said that zoning as a tool of exclusion only works based on wealth and income, and not as explicitly racist, but the extent of correlation means zoning policies effectively exclude racial groups, families with children, and other protected classes. She said her research focused on Blacks because of its historical importance in the history of Massachusetts. Committee members thanked her for her valuable work.

4. Newton Lottery Process Follow-up

- SDI presented responses to questions that were identified in the September meeting of the committee. She said that JF, the City's ADA/504 Coordinator, and she will be meeting to discuss her important review of development plans at an earlier stage so that issues JF identifies on accessibility and affordability can be caught earlier in the review process. She noted the FHC questions regarding an example of an incomplete City review of a fair marketing plan. She said that, at this time, they rely primarily on complying with state approval of these plans, and the City must defer to the state to ask developers to make changes, but they will review the process Planning currently follows and recommend any changes. She said that the City is undertaking a look-back review of the Inclusionary Zoning (IZ) ordinance requirements. She said this is done every five years and that the review is due in 2024. She said the review will include considering how affordable units in projects of less than seven units will be treated, among other issues. She said that her expectation is to accomplish this estimated in draft form in the summer months. ES invited her to update the committee on progress as this review goes along. JM asked that anything affecting the lottery process should be broadly and comprehensively reviewed, and she asked her to present to the subcommittee on lottery and lease-ups among other groups. Councilor AD asked for clarification regarding the IZ assessment. She asked if the focus of the assessment will be on the effectiveness of IZ to get projects built or will it be on the effectiveness of the lottery process. SDI responded that the lottery and marketing process is part of the IZ ordinance and compliance with state requirements as part of the look-back. She said the lottery and marketing process will be reviewed as part of consideration for any changes that may be proposed. Councilor AD said that the last review was about six years ago and there have been many changes since that time, including changes in the market, feasibility, costs and other issues. She said she looks forward to getting the data.

- TM asked about the data that developers collect that the Lottery Results & Lease-Ups Sub-Committee has been collecting and have been successful with the bigger developers. She said this lottery and lease-ups subcommittee would like to have further discussion with Planning on how this data is collected and analyzed to encourage fair housing. SDI stated that she could attend one of their meetings.
- JF asked about the need to provide more affordability and accessibility to reach people with disabilities at under 50% of Area Median Income (AMI). She said that they require rental subsidies to make the units affordable at these levels, otherwise the rent levels are inaccessible. She described challenges for people with disabilities in terms of unit designs and access to amenities, such as laundry facility access. She asked that the IZ review include consideration for more extremely low-income people with disabilities as well as review of unit lay-outs. She encouraged review of the IZ by more departments as well as the groups identified. SDI said that she would like to see more extremely low-income units but that feasibility will need to be considered. She talked about the need to also address people that are unhoused. JF agreed that there needs to be improved accessibility and affordability for people with disabilities that are both housed or not housed.

5. Discussion of 2024 Committee Priorities

- ES said that as the IZ ordinance review and proposed changes are being made, this is also a good time to review the FHC's project review matrix and the document called Reviewing Consideration of City Fair Housing Goals. She said that it is important to get clarity on how that fits in Planning's project review process, including JF's accessibility and affordability review. She said that it is preferable to identify issues and concerns for developers early in the review process so that costs and delays are minimized. She also said that the City's oversight of the Subsidized Housing Inventory including IZ, and all permitted affordable housing, is another area that we have had some discussion about enhancing and this should remain a priority. She said that responding to exclusionary zoning policies and actions should also be part of our priority list.

6. Subcommittee Updates

- **Lottery Results & Lease-ups Sub-Committee**
- **Membership & Nominating Sub-Committee**
 - DR stated that the FHC has a potential new member that JK recommended. Steve Burnham is the prospect, and he is currently participating in this meeting. DR stated that he has another meeting to attend to show interest and then he will be able to start the application process. JK said that she would follow up with SB. ES mentioned that the committee still needs a fair housing lawyer, as JM has also stressed.
- **Fair Housing Award Sub-Committee**
 - ES requested nominations for the award. She said that we would like to have a nomination for the next meeting. JM asked for written criteria and ES said she would share it with the committee. It was crafted around Sheila Mondschein's fair housing work.

7. Fair Housing Committee Priorities Discussion

FH Protected Groups

- Promote housing choice for diverse populations to advance Affirmatively Furthering Fair Housing (AFFH), with focus on race/ethnicity, public subsidy, and disability
- Promote Diversity, Equity, Inclusion and Belonging in Newton
- Promote effective processes/practices for new affordable homeownership and resales
- Promote improved practices for real estate professionals to achieve more housing choice for diverse populations
- Identify and work to overcome barriers to successful tenancies and to improve processes/practices for tenant selection in lottery and market rate multifamily rental housing

Learning/Teaching

- Enhance FH literature and website information and access for the public
- Promote FH training for real estate professionals, landlords, tenants, the public and committee members

Data and Analysis

- Promote data collection on multi-family rental and new homeownership occupancy
- Enhance Project Review of Housing Developments to advance AFFH
- Support AI/Consortium Fair Housing Testing and FH testing in Newton

Collaboration

- Collaborate with Related Newton Commissions and Committees to increase affordable housing for households of various sizes and lower incomes and to encourage increased funding for affordable housing
- Promote affordable housing production in coordination with other City commissions and committees
- Support federal, state and City initiatives that promote AFFH
- Collaborate with Human Rights Commission on Fair Housing Complaint Process
- Contribute to Newton's FH-related plans
- Address committee membership appointments with representation from Human Rights Commission and legal counsel with FH specialty

Next meeting Wednesday, February 7, 2024

*Supplementary materials are available for public review in the Planning Department of City Hall (basement) the Friday before the meeting. For more information contact **Malcolm Lucas at 617.796.1149**. The location of this meeting/event is wheelchair accessible and Reasonable Accommodations will be provided to persons with disabilities who require assistance. If you need a Reasonable Accommodation, please contact the City of Newton's ADA/Section 504 Coordinator, Jini Fairley, at least two business days in advance (2 weeks for ASL or CART) of the meeting/event: jfairley@newtonma.gov or (617) 796-1253. The City's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711