



Zoning & Planning Committee Report

City of Newton **In City Council**

Monday, July 22, 2024

Present: Councilors Baker (Chair), Oliver, Albright, Wright, Krintzman, Getz, and Kalis

Absent: Councilor Danberg

Also Present: Councilors Farrell, Leary, Block, Lucas, Greenberg, and Kelley

City Staff: Andrew Lee, Senior Assistant City Solicitor; William Ferguson, Co-Director of Sustainability; Ann Berwick, Co-Director of Sustainability; Barney Heath, Director of Planning; Jennifer Caira, Deputy Director of Planning; Zachary LeMel, Chief of Long Range Planning; Nora Masler, Planning Associate; John Sisson, Economic Development Director; and Jaclyn Norton, Committee Clerk

All agendas and reports, both past and present can be found at the following link: [Zoning & Planning Committee | City of Newton, MA \(newtonma.gov\)](https://www.newtonma.gov/zoning-planning)

For more information regarding this meeting, a video recording can be found at the following link: [Zoning and Planning Committee - July 22, 2024 - YouTube](https://www.youtube.com/watch?v=...)

#286-24 Appointment of Timothy LeBlanc to the Newtonville Historic District Commission

HER HONOR THE MAYOR appointing Timothy LeBlanc, 33 Woodland Road, Auburndale as a member of the Newtonville Historic District Commission for a term of office set to expire on August 12, 2027. (60 Days: 09/06/2024)

Action: **Zoning & Planning Approved 7-0**

Note: Mr. LeBlanc described his interest in historic preservation and that he has successfully restored four historic homes. He also noted his support for the historic fabric of Newton and has previously served on the Newtonville Area Council. Councilors noted support for the appointment. Councilors asked Mr. Leblanc's views on multi-family conversions in historic districts and how they would balance modernization with preservation. Mr. Leblanc responded that for the multi-family conversion question, he would have questions about the location of a fire escape and that when modernizing parts of a historic building, it is important that the renovations fit within the existing character. Committee members voted 7-0 on a motion to approve from Councilor Krintzman.

#287-24 Appointment of Nancy Greenberg to the Chestnut Hill Historic District Commission

HER HONOR THE MAYOR appointing Nancy Greenberg, 33 Woodland Road, Auburndale as a member of the Chestnut Hill Historic District Commission for a term of office set to expire on August 12, 2027. (60 Days: 09/06/2024)

Action: **Zoning & Planning Approved 7-0**

Note: Mrs. Greenberg noted the importance of maintaining historic buildings and that modern updates can be made while preserving the integrity of the historic architecture. Councilors asked her the same questions as Mr. Leblanc. On multi-unit conversion, she favored it as long as the zoning allowed for it and reaffirmed that modernization could be done while preserving the architectural integrity of the building. When asked why Mrs. Greenberg and Mr. Leblanc's appointments were not to the Auburndale Historic District Commission it was noted that they were selected for these Commissions as they needed members. Committee members voted 7-0 on a motion to approve from Councilor Krintzman.

#266-24 Appointment of David Boronkay to the Newton Upper Falls Historic District Commission

HER HONOR THE MAYOR appointing David Boronkay, 187 Melrose Street, Auburndale as an Alternate member of the Newton Upper Falls Historic District Commission for a term of office set to expire on July 8, 2027. (60 Days: 08/16/2024)

Action: **Zoning & Planning Approved 7-0**

Note: Mr. Boronkay stated that he is looking to switch from the Auburndale Historic District Commission to the Newton Upper Falls Historic District Commission due to having multiple professional projects in the Auburndale Historic District. A Councilor asked how he would balance modernization and preservation. Mr. Boronkay stated that there would need to be a focus on maintaining the historic character of the building while performing this modernization. Councilors noted support for the appointment and voted 7-0 on a motion to approve from Councilor Krintzman.

#285-24 Appointment for Ed Olhava to the Community Preservation Committee

HER HONOR THE MAYOR appointing Ed Olhava, 11 Scarsdale Road, Newton as a member of the Community Preservation Committee for a term of office set to expire on August 12, 2027. (60 Days: 09/06/2024)

Action: **Zoning & Planning Approved 7-0**

Note: Mr. Olhava stated that he has been a resident of Newton since 2008 and has utilized many recreational facilities within the City. He is also a member of Bike Newton and noted how the CPC is a powerful tool to improve Newton. Councilors noted support for the appointment and voted 7-0 on a motion to approve from Councilor Albright.

- #76-24(3) Discussion and possible amendments to change how building height is measured**
ZONING & PLANNING COMMITTEE requesting discussion and possible amendments to Chapter 30, Zoning to require that building height is measured from original grade instead of finished grade.
Zoning & Planning Held 8-0 on 05/13/24
Zoning & Planning Held 4-0-3 (Councilors Oliver, Wright and Baker Abstained) on 06/10/24
Action: Zoning & Planning Approved 6-0-1 (Councilor Albright Abstaining)

Note: Zachary LeMel, Chief of Long Range Planning, outlined the work that had been done before this meeting and provided an overview of the proposed amendment. The proposed amendment would change the starting point of a building height being measured from the original grade as opposed to the finished grade. The Planning Department also conducted additional analysis on three types of lots; a site that slopes up from the street, a flat site, and a site that slopes down from the street. The attached presentation provides examples of each of these types of lots and how the proposed amendment would affect development on each site. (During the presentation a typo was noticed on the presentation and the attached presentation reflects the corrected information on slide 17.) Mr. LeMel concluded this part of the presentation noting that these amendments promote developers needing to work with the existing grade of a site.

Later in the discussion Nora Maslar, Planning Associate outlined parallel amendments that the Committee could consider. These include an earth-moving ordinance, exemptions for retaining walls fully below natural grade, amend the definition of two-family detached, and allowing for two single-family buildings in MR zones.

Councilors stated that they appreciated the examples of the presentation. A few Councilors raised concerns that the amendments to the zoning ordinance have been done incrementally resulting in a confusing zoning ordinance. A Councilor asked how the proposed amendment affects multi-family housing. Mr. LeMel stated that this amendment would help make development more predictable as changing the grade under the current zoning ordinance would allow for developments that appear larger than what is currently allowed. Councilors noted an example of this in the City and how the proposed amendment would have helped prevent it. Multiple Councilors stated support for the proposed amendment due to it helping prevent stormwater runoff which can be exacerbated by retaining walls. A Councilor asked if a sooner effective date than January 1, 2025, is recommended. Jennifer Caira, Deputy Director of Planning, and Mr. LeMel noted that January 1, 2025, was selected after speaking with various departments and the building professionals' group and not wanting to catch any projects in limbo. The Inspectional Services Department will be notifying potential applicants, so they are aware of the amendment.

Committee members voted 6-0-1 (Councilor Albright Abstaining) on a motion to approve from Councilor Kalis.

#85-24 Request for discussion and possible amendments to enhance the preservation of existing homes.

COUNCILORS BAKER, OLIVER, MALAKIE, KALIS, GETZ, LUCAS, LOBOVITS, AND WRIGHT requesting a discussion and possible amendments to Chapter 30 Zoning or other City Ordinances to enhance the preservation of existing homes over their replacement by larger and more expensive structures.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 6-0 (Councilor Albright Not Voting) on 03/11/24

Zoning & Planning Held 8-0 on 04/08/24

Zoning & Planning Held 8-0 on 05/13/24

Action: Zoning & Planning Held 7-0

Note: Mr. LeMel noted that the Committee needs to begin shifting from the quick fixes to the zoning ordinance and transition to a more comprehensive review of the zoning ordinance. The attached workplan will aid in the development of amendments to the zoning and other ordinances along with opportunities for collaboration with the Planning Department, City Council, and the Community throughout each step. Mr. LeMel stated that the Planning Department has brought on Utile Architecture & Planning to assist the Department in developing recommendations. The Committee was joined by Tim Love, Founding Principal; and Loren Rapport, Urban Designer. Both of these individuals worked on the VCOD (Village Center Overlay District) in Newton and plan to utilize the knowledge gained during that process to aid the development of these recommendations. The first recommendations are expected to be before the Committee at the end of this year. A Council asked if a more comprehensive discussion could be had at a future meeting about what the Councilors like and dislike within the current zoning. Councilors noted that they would like the environmental factor of a teardown vs multi-family conversion to be examined, showing how it is possible to renovate and update buildings within historic districts, expanding multi-family conversion opportunities, and the extent the City is losing its diversity of housing stock. Councilors voted 7-0 on a motion to hold items #85-24 and #41-24 from Councilor Getz.

#41-24 Amend the setbacks in the MR zones to encourage preservation of existing buildings

COUNCILORS ALBRIGHT, DANBERG, KRINTZMAN, AND LEARY seeking a discussion with the Planning Department to consider ordinance amendments that would revise the metrics in the multi-residence (MR1, MR2 and MR3) zones, to regulate the size of new buildings better, enable a wider range of housing options close to public transit, and better incentivize preservation and renovation of existing housing stock.

Zoning & Planning Held 7-0 on 02/15/24

Zoning & Planning Held 6-0 (Councilor Albright Not Voting) on 03/11/24

Zoning & Planning Held 8-0 on 04/08/24

Zoning & Planning Held 8-0 on 05/13/24

Action: **Zoning & Planning Held 7-0**

Note: This item was discussed jointly with item #85-24. A written report can be found with item #85-24.

#42-24 Request for Discussion and Ordinance to require energy use reporting
COUNCILORS ALBRIGHT, DANBERG, and LEARY on behalf of the Newton Citizens Commission on Energy (NCCE), requesting discussion and an ordinance that would require large property owners (campuses and large commercial buildings) to report energy use and associated greenhouse gas emissions annually to the city of Newton, to be used to encourage reductions in said energy use and greenhouse gas emissions in accordance and support of the goals set forth in the Newton Climate Action Plan.

Zoning & Planning Held 8-0 on 05/28/24

Zoning & Planning Held 5-0-1 (Councilor Danberg Abstaining) (Councilor Krintzman Not Voting) on 06/10/24

Action: **Zoning & Planning Held 7-0**

Note: The Chair noted that the Committee has met previously to discuss this item and this meeting will be to provide an update to the Committee in advance of a vote this fall. He added that the amendment from Councilor Danberg to include residential buildings over 20,000 sf is still on the table and will be taken up in the fall. Bill Ferguson, Co-Director of Sustainability, stated that a memo (attached) was provided as part of backup material for this meeting that outlined the actions being taken to respond to questions raised by Councilors and members of the public during previous meetings. He also drafted a response to a letter sent by the Charles River Chamber of Commerce. (attached) Later in the discussion Halina Brown noted that a case study for the First Unitarian Universalist Society in Newton was included as backup material and demonstrates how previous renovations to a building can help them in complying with BERDO.

Councilors asked if any work is being done to understand the impact of including residential buildings over 20,000 sf. Mr. Ferguson described that the City is currently conducting a case study with Dante Capasso on residential buildings along with working with the Newton Housing Authority. The current city position is that only commercial buildings would be included in BERDO at this stage and residential buildings over 20,000 sf would be added next year. He is working to have information for the Committee to consider Councilor Danberg's amendment at a meeting in the fall. Councilors noted how in preparing the materials for this fall Mr. Ferguson would need to explain the benefits that are present for building owners if this is passed. Mr. Ferguson stated that he is looking at the impact on rents, the cost of gas, and the cost of electricity upgrades if needed.

Councilors voted 7-0 on a motion to hold from Councilor Getz.

The meeting adjourned at 10:00pm.

Respectfully Submitted,

R. Lisle Baker, Chair

Measuring Height from Original Grade - Additional Analysis

Docket #76-24(3)

Zoning and Planning Committee
July 22, 2024
Planning & Development

1

Content

Part I (Attachment A)

- ▶ Work to-date
- ▶ Proposed amendment
- ▶ Additional analysis

Part II (Attachment B)

- ▶ Parallel amendments

2

Work To-Date

- ▶ Recommendation to measure height of new/re-development from original grade when raising the overall grade.
- ▶ General support from community and City Council, but more analysis requested:
 - Analyze more Newton properties
 - Review earthworks ordinance in other cities/towns
 - Look at interplay with other changes (i.e. retaining walls)
- ▶ Staff recommend:
 - Approval of the proposed amendment
 - Continued support to bring forward additional amendments under parallel docket items (#85-24, #41-24)

Proposed Amendment

1.5.4. Height

E. Original Grade. The grade of the lot before any regrading, demolition, development, or redevelopment begins based on the following standards: ~~In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall mean the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.~~

1. If a lot,

- a. ~~Has an existing building that is to be demolished or modified, the original grade of the lot shall be the grade that existed prior to any activity that caused a change in position or location of soil, sand, rock, gravel, or similar earth material, which changes the grade of the lot, that occurred after January 1, 2025 and within five (5) years of the date of application for the building permit for such demolition or modification of the existing building; or~~
- b. ~~Has no existing building on the property, the natural grade of the property, prior to any activity that causes a change in position or location of soil, sand, rock, gravel, or similar earth material, which changes the grade of the lot, shall be considered the original grade; or~~
- c. ~~Is a new subdivision, notwithstanding anything to the contrary contained in the City of Newton Zoning Ordinance, the original grade shall mean the approved and recorded grade.~~

2. ~~The original grade shall be certified by a registered Massachusetts licensed professional land surveyor and shown on a certified plot plan to be verified by the Building Inspector prior to commencement of work on the property with all elevations in Newton City base.~~

Updated effective date to January 1, 2025, responding to the pre-development timeline typical of residential projects

F. Grade Plane Average. A horizontal reference plane for a building as a whole representing the average of ~~finished-original or proposed~~ grade, ~~whichever is lower,~~ elevations around the perimeter of a building, as determined by the length-weighted mean formula below. All walls of length ~~six (6) feet or greater~~ ~~greater than 6 feet~~ shall be included in segments of consistent grade or slope.

1. ~~In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall refer to the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.~~

$$\Sigma = \frac{(e1 + e2) / 2 \times L}{P}$$

Where:

- Σ sums the weighted average grades of all segments;
- Segments less than 6 feet in length are not included as separate segments;
- e1 and e2 are the elevations of the ~~finished-original or proposed~~ ground level, ~~whichever is lower~~ at the respective ends of each segment, determined as the lowest point at each end of the segment within 6 feet of the foundation or the lot line, whichever is closer;
- L is the corresponding horizontal length of the segment; and
- P is total horizontal length of all segments

Proposal will not change how height is measured for projects lowering the grade

Corrected formula, which was not correctly transcribed in previous presentation

Update that elevations are taken from original grade when raising the grade

1.5.5. Floor Area

D. **Mass Below First Story.** For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

1. **Standards.** The lesser of 50 percent of the floor area of mass below first story OR:
((X/Y) floor area of mass below first story)

Where:

- X = Sum of the width of those sections of exposed walls below the first story having an exterior height ≥ 4 feet as measured from ~~existing-original~~ or proposed grade, whichever is lower, to the top of the subfloor of the first story.
- Y = Perimeter of exterior walls below first story

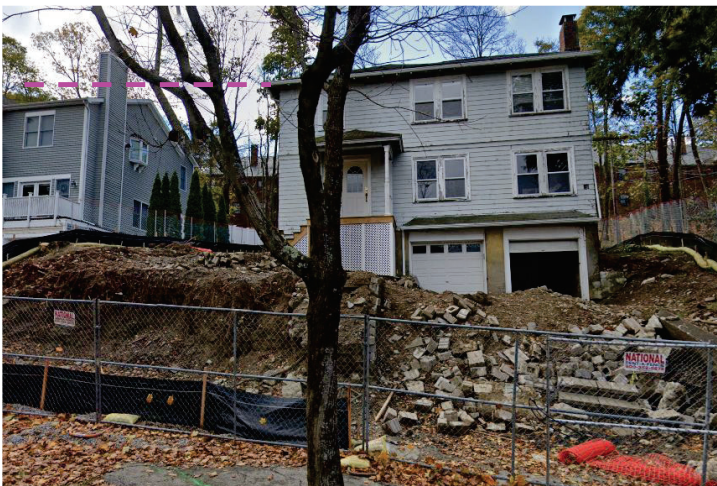
Additional Analysis

Recent Newton Projects

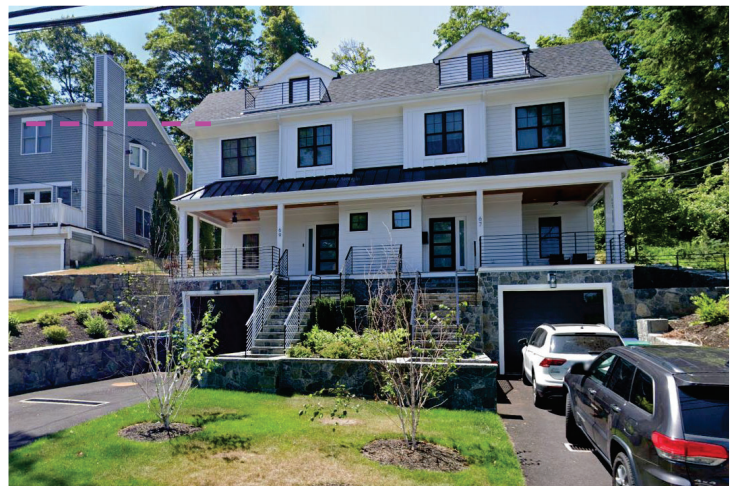
- ▶ Site that slopes up from the street
- ▶ Flat site
- ▶ Site the slopes down from the street

67-69 Ripley Street (site slopes up from street)

Before



After



- — — - Roof eave on proposed project is lower than original home, making home feel less imposing

67-69 Ripley Street (site slopes up from street)

This project lowered the overall grade of the site.
The proposal measures height from proposed grade when it is lower than the original.

of stories based on grade*

Original grade: 2.5
Proposed grade: 2.5

Retaining Walls

Need to be redesigned to be a by-right development

*
Original: recommended regulation
Proposed: existing regulation

After



67-69 Ripley Street (site slopes up from street)

Key Measurements (7,200 sq ft lot - MR1)

	Before	After
Avg. Grade	N/A	216.44'
Basement Floor	215.63'	209.53'
1st Floor	224.90'	219.33'
Ridge El.	249.87'	250.50'

The basement and 1st floor height are significantly lower than original home

Key Findings

- ▶ New development lowered the grade of the property and exposed more of the basement
- ▶ Under new zoning, home would be allowed* and basement still considered a basement

*Retaining walls would need to be modified for by-right development to meet recently approved updates

184 Spiers Road (flat site)

Before



After



184 Spiers Road (flat site)

*
Original: recommended regulation
Proposed: existing regulation

FAR Based on Grade*
Original grade: ~ 3,700 sq ft
Proposed grade: 2,874 sq ft

of stories/height based on grade*
Original grade: 3.5/36.59'
Proposed grade: 2.5/35.10'

Basement height above grade*
Original grade: 5.0'
Proposed grade: 3.73'

~1.5' retaining walls used to raise the grade

After



184 Spiers Road (flat site)

Key Measurements (7,000 sq ft lot - SR3)

	Before	After
Avg. Grade	113.66'	114.94'
Basement Floor	N/A	110.67'
1st Floor	114.0'	119.67'
Ridge El.	129.48'	150.25'

Midpoint of proposed basement is 114.67', which is above the original grade, not meeting the definition of basement in the ordinance

Key Findings

- ▶ New development raised the grade of the property and added a full height basement
- ▶ Under proposal, home would not be allowed by-right and basement would be considered the 1st floor

161 Beethoven (site slopes down from street)

Before



After



161 Beethoven (site slopes down from street)

View from the Side

*
Original: recommended regulation
Proposed: existing regulation

FAR Based on Grade*
Original grade: ~7,500 sq ft
Proposed grade: ~ 5,261 sq ft

of stories/height based on grade*
Original grade: 3.5/38.57'
Proposed grade: 2.5/34.72'

Basement height above grade*
Original grade: 6.82'
Proposed grade: 2.97'

Retaining walls raised the grade ~4.0'



Next Steps

Planning Recommendation

- ▶ ZAP recommendation to City Council on proposed amendment
- ▶ Consideration to docket some or all parallel amendments

Thank you

Parallel Amendments

Earth Moving Ordinances

Earth Moving Ordinances

- ▶ Earth moving bylaws regulate the amount of earth that can be removed or filled into a site based on specific parameters:
 - Amount of earth being moved
 - Reason for the earth being moved

Purpose of an Earth Moving Ordinance

- ▶ Preventing Erosion and Sedimentation
- ▶ Support Public Safety
- ▶ Protecting Natural Habitats
- ▶ Maintaining Consistent Aesthetics

Earth Moving Ordinance - Examples

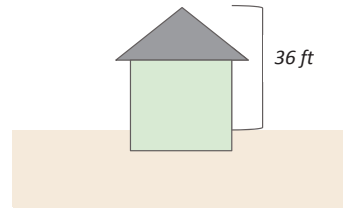
Municipality	Regulation	Height Definition
Concord	The moving earth over 1,000 cubic yards requires Board approval	Measured from original grade
Wayland	No moving of earth beyond necessary for the construction of a foundation between 500 and 1,500 cubic yards may be moved based on district.	Measured from finished grade
Weston	Removal of earth is permitted given that the removal of material does not exceed the import of material associated with construction of a way, a septic system or a drainage system. Removal for a foundation is permitted.	Measured from original grade

Application to height

Not allowed in earth moving ordinances: *Earth moving to and from a lot*



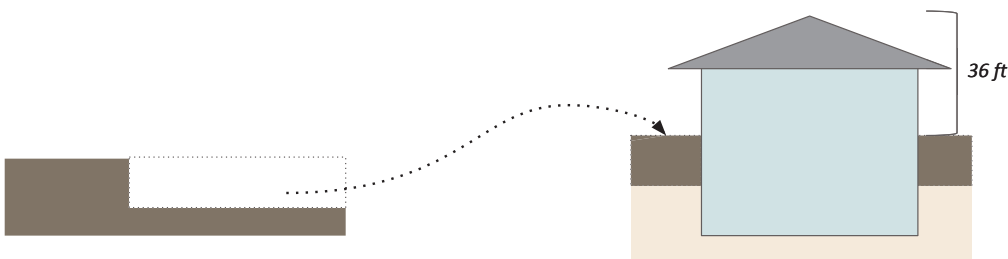
Lot A - Before



Lot B - Before

Application to height

Not allowed in earth moving ordinances: *Earth moving to and from a lot*

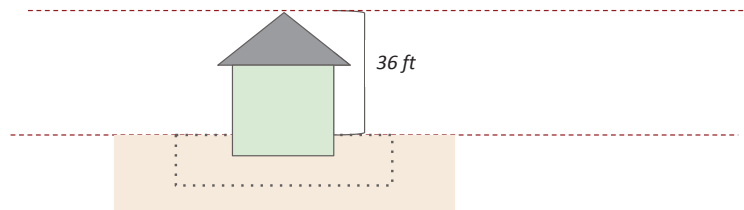


Lot A - Before

Lot B - Before

Application to height

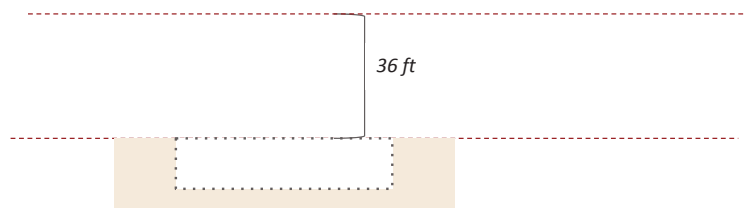
Allowed in earth moving ordinances: *Earth moving within a lot during construction of a foundation.*



Lot B - Before

Application to height

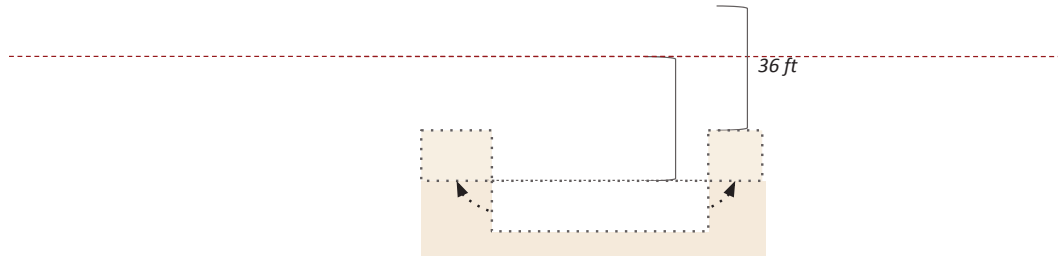
Allowed in earth moving ordinances: *Earth moving within a lot during construction of a foundation.*



Lot B - Before

Application to height

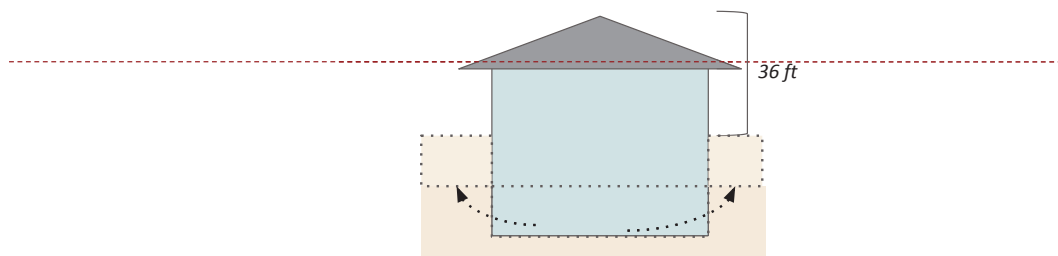
Allowed in earth moving ordinances: *Earth moving within a lot during construction of a foundation.*



Lot B - After

Application to height

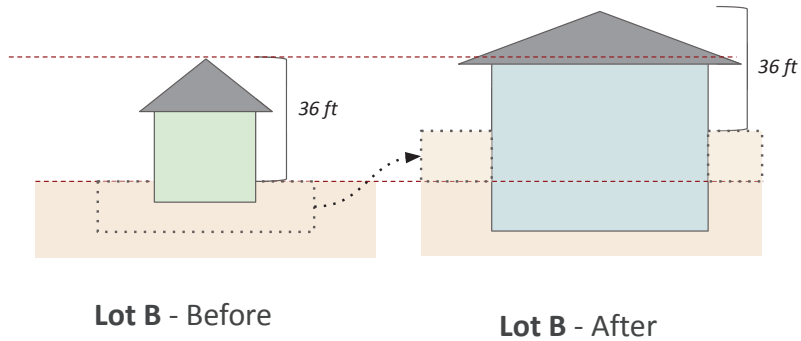
Allowed in earth moving ordinances: *Earth moving within a lot during construction of a foundation.*



Lot B - After

Application to height

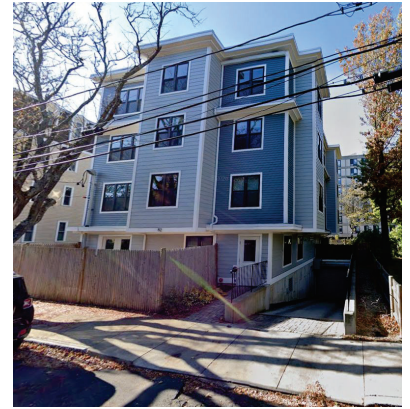
Allowed in earth moving ordinances: *Earth moving within a lot during construction of a foundation.*



Retaining Walls

Retaining Walls

- ▶ All retaining walls greater than 4' require a special permit (April 2024)
- ▶ Explore exemptions for higher walls fully below natural grade (i.e. not visible) for multi-family



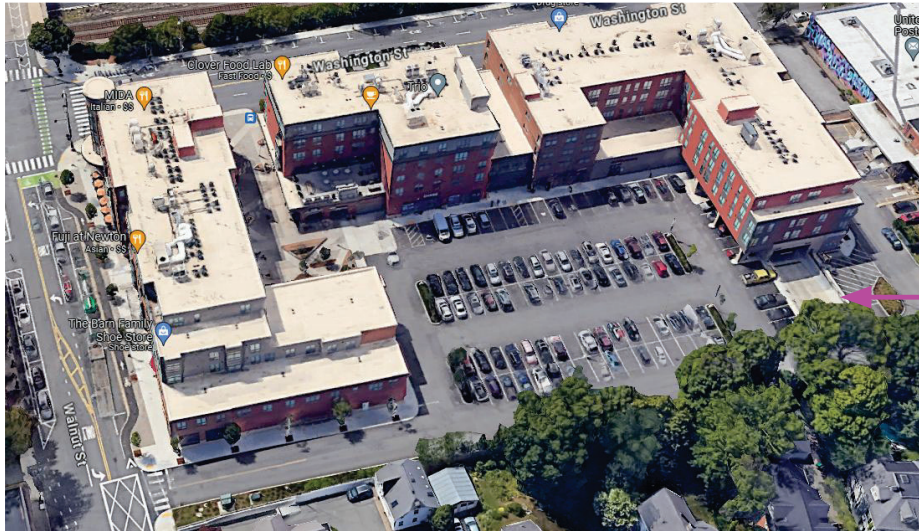
Retaining Walls



429 Cherry Street

Almost no portion of the retaining wall is above the natural/original grade

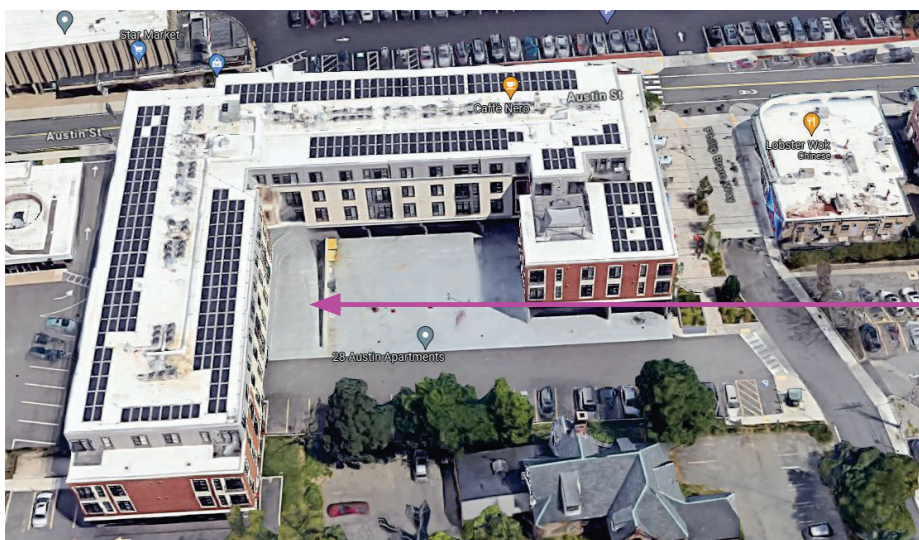
Retaining Walls



Trio

Walls at lowest point of ramp are higher than 4' before entering the building, but fully below grade and not visible

Retaining Walls



28 Austin Street

Above grade portions of the wall are less than 4'

Definition of Two-Family, Detached

- ▶ 2021 Proposed amendments failed to pass at City Council
- ▶ Simplify definition and regulate through dimensional regulations/district standards



Homes pictured above are not permitted under Newton's current definition

Allow Two Single-Family Buildings in MR Zones

- ▶ MR allows two units by-right currently
- ▶ Allowing two units, one per building, could break up the building mass/overall appearance



Single building with two-units allowed by-right

Two-single unit homes on one lot is not allowed

Project Workplan
Residential District Zoning Review

Introduction

This year the City Council has docketed multiple items related to the impact of development and redevelopment within Newton's residential neighborhoods. These include:

- A. #85-24 Request for discussion and possible amendments to enhance the preservation of existing homes.
- B. #41-24 Amend the setbacks in the MR zones to encourage preservation of existing buildings.
- C. #76-24 Discussion and possible ordinance amendment to deal with grade changes created during construction causing stormwater runoff on neighboring properties.
Note: While this item specifically calls out impacts on stormwater, analysis has shown that grade manipulation also allows for larger homes, or ones that appear larger, due to regrading. Given this, it may prove relevant to the broader workplan outlined below.

In addition, these docket items intersect with numerous City Council adopted plans and policies including the [Comprehensive Plan](#) from 2007, the 2017 [Newton Leads 2040 Housing Strategy](#), the 2019 [Climate Action Plan \(CAP\)](#), and the recently adopted VCOD/MBTA Communities zoning amendments.

Intent

This document lays out a process to analyze the current dynamics (e.g., regulatory, economic) in place influencing the redevelopment of properties in Newton's residential neighborhoods. This analysis will be surrounded by robust community participation and input. **Together, this input and analysis will lead to a series of options for potential updates to Newton's residential regulations.** The intent of this effort is to:

1. Hear directly from City Councilors on the principal issues that need to be examined in the context of Newton's current zoning regulations.
2. Review and analyze the current regulations, development review processes, and market factors that are influencing Newton's on-going residential development patterns.
3. Identify specific aspects of the existing zoning code and resulting concerns corresponding to Council/Community input.
4. Research and present alternative updates to the zoning code, and other City Ordinances.
5. Collaborate with the City Council/Community along each step of the project.

Project Workplan
Residential District Zoning Review

Workplan

Task 1. Hear directly from City Councilors on the principal issues that need to be examined in the context of Newton's current zoning regulations.

(July-August 2024)

- Sub-tasks
 - a. Dedicate a ZAP discussion(s) to hearing from City Councilors on these docket items.
 - b. Develop a Public Participation and Input Plan (e.g., public meetings, focus groups, round tables, info sessions, online survey, etc.)
- Outcomes
 - a. An initial list of issues to analyze
 - b. A developed Public Participation and Input Plan for the project
 - c. A finalized project timeline

Task 2. Review and analyze the current regulations, development review processes, and market factors that are influencing Newton's on-going residential development patterns.

(September-October 2024)

- Sub-tasks
 - a. Evaluate current zoning and land use regulations in conjunction with land costs and market pressures.
 - b. Analyze how building code review requirements impact development decisions
 - c. Conduct economic analysis of recent developments, incorporating recent updates impacting development (e.g., electrification, stormwater, and tree ordinances).
 - d. Conduct market research with industry experts to understand market preferences and factors that influence decision making.
- Outcomes
 - a. An understanding of the current rules and regulations and their impact, collectively
 - b. An understanding of the economic incentives created by the current regulations

Task 3. Identify specific aspects of the existing zoning code and resulting concerns corresponding to Council/Community input.

(September-November 2024)

- Sub-tasks
 - a. Summarize and present findings from Tasks 1 and 2 in City Council ZAP workshop(s)
 - b. Host community meeting(s) and focus group meeting(s) on findings
 - c. Further refine the statement of issues and concerns based on analysis and community input

Project Workplan

Residential District Zoning Review

- Outcomes
 - a. Comprehensive list of regulatory areas to address per analysis and community outreach
 - b. Shared understanding of the issues and concerns

Task 4: Research and present alternative updates to the zoning code, and other City Ordinances.

(November 2024 - March 2025)

- Sub-tasks
 - a. Draft zoning guiding principles to achieve desired outcomes
 - b. Develop case studies that visualize allowed designs of proposed zoning changes
 - c. Evaluate potential impacts of proposed updates on property values and property costs
 - d. Economic analysis of proposed changes including feasibility of construction, impacts on property values, and impacts on municipal finances
 - e. Input from the building and realtor communities that outcomes from new regulations are feasible from a market perspective
 - f. Adapt draft regulations to the neighborhood context by considering rules appropriate to Newton's varied locations
 - g. Solicit robust input from community on recommendations and materials developed
- Outcomes
 - a. Outline of proposed zoning and other ordinance amendments
 - b. Draft implementation plan for above

Task 5: Collaborate with the City Council/Community along each step of the project.

(Ongoing)

- Sub-tasks
 - a. Host workshop(s) at ZAP/City Council
 - b. Refine and then finalize recommendations for approval
 - c. Hold public hearing at ZAP/Planning Board
- Outcomes
 - a. Approved zoning and other ordinance amendments
 - b. Develop and implement a tracking system to determine outcomes and possible changes needed

Project Workplan
Residential District Zoning Review

Timeline

Calendar Overview

2024						2025		
July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
Task1. Hear directly from City Councilors on the principal issues that need to be examined in the context of Newton's current zoning regulations.								
Task 2. Review and analyze the current regulations, development review processes, and market factors that are influencing Newton's on-going residential development patterns.								
Task 3. Identify specific aspects of the existing zoning code and resulting concerns corresponding to Council/Community input.								
Task 4: Research and present alternative updates to the zoning code, and other City Ordinances.								
					*			
Task 5: Collaborate with the City Council/Community along each step of the project.								
* Draft recommendation to be provided by December 2024 for consideration through early 2025								

MEMORANDUM

Date: July 19, 2024

To: Zoning & Planning Committee

From: William Ferguson, Co-Director of Sustainability

Re: #42-24 Request for Discussion and Ordinance to require energy use reporting COUNCILORS ALBRIGHT, DANBERG, and LEARY on behalf of the Newton Citizens Commission on Energy (NCCE), requesting discussion and an ordinance that would require large property owners (campuses and large commercial buildings) to report energy use and associated greenhouse gas emissions annually to the city of Newton, to be used to encourage reductions in said energy use and greenhouse gas emissions in accordance and support of the goals set forth in the Newton Climate Action Plan.

Dear Councilors,

Below is a list of items that we are working on to prepare for the September ZAP meeting. Our work on these items are mainly to provide answers and insights to questions that were raised during the June 10th Public Hearing which you conducted. Many of the questions raised in the hearing were also raised by Greg Reibman, President and CEO of the Charles River Chamber, in a letter to you following the hearing on June 11th. I have attached my answers to that letter which I sent directly to you on June 25th. I think Mr. Reibman's questions and our answers are very informative and helpful to the process.

We would like to make a presentation at the September meeting that answers questions raised on June 10th with a focus on case studies, City staffing questions, assistance that will be available to building owners from the City, State and utilities, the basics on how to set up an account in Energy Star Portfolio Manager, and basics how to plan an approach for BERDO compliance by building owners.

Below are the things we are working on now for that purpose.

1. 181 Lexington case study. This is the 30 unit apartment building that we have been developing a case study on in conjunction with the owner since Oct. 2023. The owner, Dante Capasso, and Halina Brown each presented a version of the case study at the June 10th hearing using incomplete information. I am working on getting the rest of the information needed for the most accurate and factual case study possible. The specific data that is needed to complete this case study are:

a. Use my contacts at National Grid to determine the utility incentive amount. I have been able to complete this task since the June 10th hearing.

b. Working with Mr. Capasso to help him prepare and submit a work order application to Eversource to determine the cost of an electric service upgrade. Mr. Capasso has submitted the application, and we are awaiting Eversource's response.

2. Case studies: We expect to present four case studies at the September ZAP meeting including 181 Lexington, a church, and two City of Newton buildings that have been electrified.

I have also asked NGrid, Eversource, Mitsubishi, Daikin, Mass CEC and Boston BERDO for case studies and/or project cost information and may add some information to our presentation if any is provided.

3. I have obtained information from Hannah Payne, the head of Boston BERDO on their staffing and consultant budget. This information is addressed in my attached response to the Chamber letter.

4. I drafted a response to the letter sent to Chair Baker and Vice Chair Oliver by Greg Reibman, President and CEO of the Charles River Regional Chamber. This letter was sent by Mr. Reibman the day following the June 10th hearing and raises a number of questions about the BERDO program. I sent answers to you previously. An italicized copy of my response is attached.

5. I have requested information on the budgets for Statewide utility commercial and multi-family energy efficiency and electrification programs under the next three-year plan from my contacts at NGrid and Eversource. These are substantial resources from the utility and Mass Save programs that will be available to assist building owners to implement BERDO. I have been working closely with the utilities on BERDO coordination with these programs. I will be presenting BERDO to their project expeditors at a September 16th meeting. Project expeditors are vendors who work for utilities delivering various energy efficiency and electrification services to customers.

6. Chair Baker has specifically requested information on how churches can comply with BERDO. Halina Brown has completed a report on the 1st Unitarian Universalist Church, 1326 Washington St.

7. I Met with the MA Dept. of Energy Resources on the Large Building Energy Reporting requirement. This is a legislatively mandated requirement for utilities to report energy use data for all buildings greater or equal to 20,000 square feet. The first report will be publicly available in October 2025. This information will be very helpful to building owners to fulfill their BERDO reporting requirements.

8. I have asked Synapse (our consultant) to review the transcript of June 10th hearing and have asked Synapse to prepare a draft Q&A for my review. This will be available soon and provided to you.

9. We are reviewing case study information on Auburndale library and NECP for presentation at the September ZAP meeting.

10. We are preparing a table on the BERDO compliance status for several buildings for which we have information. This table will illustrate that many buildings are initially in compliance.

11. We are working with NHA, NGrid and ABCD on developing a heat pump project with costs and incentives at a 12- unit affordable apartment building at the Horace Mann complex. This will help determine the scope of incentives available for affordable housing heat pump projects.

I look forward to seeing you on Monday, July 22nd to continue this process.

William H. Ferguson
Co-Director of Sustainability



June 11, 2024

Dear Chairman Baker and Vice Chair Oliver:

Thanks very much for the opportunity to share our comments Monday, June 10 regarding the proposed BERDO ordinance now before Zoning & Planning.

As I noted in my opening comments, residents and businesses share a collective responsibility to reduce emissions and move away from fossil fuels. We respect and we recognize the urgency. We also have the highest respect for the Citizens Energy Commission that helped shape this proposal and look forward to working with you and the council on developing policies and programs aimed at curbing emissions and fossil fuel consumption.

However, it's important that the council and the city understand that for many property owners and tenants, BERDO will be both hard to execute and expensive. It's going to require substantial resources and support systems from the city too, far more, we believe, than are budgeted or envisioned.

City's Response: The City's resources will be supplemented by resources available from the utilities and the State. These resources include billions of dollars under the utility and Mass Save programs for technical support, incentives and financing. The City has been working in close coordination with the utilities as it has developed the Newton BERDO.

For reporting assistance, the State's Large Building Energy Reporting program requires utilities to report electric use and gas use for all buildings 20,000 square feet or greater. The first energy use reports under this program will be available in October 2025 and we expect that these reports will be helpful to building owners to obtain needed energy use data. However, please note that, a single January electric bill and gas bill for each account will provide the 12 months of use data for the prior year needed to complete reporting in Energy Star Portfolio Manager. The City will provide training and support for the use of ESPM.

Note that in Boston there are 9 FTEs handling 5500 buildings. Boston's reporting is more complicated because electricity is included in their emissions standard, (not so in Newton) and they also report water use (not so in Newton). Newton will have one FTE for 413 buildings. Boston has 1 FTE per 611 buildings with a more complicated reporting requirement.

BERDO will drive up rents. It will likely make some properties obsolete, including possibly some houses of worship, some nonprofits, and some of our older, naturally affordable buildings that are homes to residents today and/or to small businesses.

City's Response: Buildings that heat using fossil fuels will become undesirable in the market. If building owners do nothing to decarbonize their buildings by 2050 they will be obsolete with or

without BERDO. BERDO will provide the framework and the incentive to keep these buildings from becoming obsolete.

We also are concerned that the ordinance, as written, leaves many unanswered questions. We respectfully request answers to the following:

The City is providing answers to these questions below. We appreciate that Mr. Reibman has taken the trouble to raise these questions and that Councilors Baker and Oliver have given the City the opportunity to respond.

- How many FTEs will the city be dedicating to BERDO administration and support in the upcoming 12 months and how many FTEs will be dedicated to this program by 2026 when Tier 2,3 and 4 properties will need reporting assistance? What if it's not sufficient?

City's Response: The City has budgeted for consultants for FY2025. In FY2026 the City will assign an FTE. The first reports are due for 47 buildings on Sept. 15, 2025. We will use the most efficient combination of consultants and City staff needed to get the job done effectively.

It is important to note that under the Commonwealth's Large Building Energy Reporting program (Section 41 of Ch. 179 of the Acts of 2022) utilities will be required to report annually to the State the energy use for all buildings over 20,000 square feet. These reports will be due in March 2025 and available in October 2025. The City is coordinating with the State DOER on this reporting program. This will greatly simplify reporting by building owners. We will also set up and provide training and reporting assistance during this first period which will also be available to the remaining buildings that are due to report on September 15, 2026. Note that BERDO does not impose penalties or fines until the third year of the emissions standard for each Tier. This leaves ample time for building owners to develop the capacity to submit reports before fines become a factor.

- What will the cost be to Newton taxpayers to administer this program and does the administration anticipate seeking an override to absorb the added costs?

City's Response: We estimate the total annual cost to be up to \$290,000/yr. The administration does not anticipate seeking an override for this purpose.

- How much should property owners expect to pay for the required 3rd party verifications?

City's Response: It cost the City \$3,000 to have a consultant enter 30 City owned buildings into the Energy Star Portfolio Manager. The City provided the energy use data and building data for each building. There may be some economies of scale that resulted in an average cost per building of \$100 for the City. In general, we would not expect it to cost building owners more than \$500-\$1,000 per building depending on size of building, number of meters, and availability of building information; this is the median cost range reported by third-party verifiers in a recent RFI (Request For Information) issued by the City of Boston (note that Boston's reporting requirements are more complex than Newton's). Owners with more buildings will probably get some economies of scale such as the City did. Verifiers are only needed the second year and every 5 years after that. Also, beginning in October 2025, the state will be publishing energy use data for all buildings over 20,000 square feet. (This is a requirement of State law, Section 41 of Chapter 179 of the Acts of 2022.) The City is working with Mass DOER on the regulations for this program to try to coordinate it with Newton BERDO and help simplify reporting requirements for Newton building owners.

- What will the appeal process be if an owner disagrees with any ruling of the sole city employee charged with managing this program? What checks and balances will be in place?

City's Response: The BERDO ordinance will be implemented using objective calculations and criteria. The ordinance does not provide for an administrative appeal process.

- The proposal includes a general list of how funds from fines could be spent. Can they instead be dedicated to helping property owners meet BERDO milestones?

City's Response: Under BERDO Section 1 (f) we specifically mention that funds can be used to provide technical assistance to property owners. This section states that the fund can be used for: "Technical assistance to property owners subject to BERDO related to implementation of the requirements of this ordinance."

It is our plan to provide training, videos of our training posted on our website, and one-on-one assistance to property owners. We also plan on holding seminars for building owners with equipment manufacturers and other experts.

- If an owner fails to pay fines for non-compliance and or failure to report, will those fines be tied to the owner or the asset? For example, if an asset is sold, will those fines transfer to the acquirer?

City's Response: The owner of a building that is not in compliance with the ordinance will be responsible for all fines that have accrued, including for violations that exist when the owner acquires title to a property subject to BERDO.

- Will there be a database published to the public so that a potential buyer will be able to include this element to the due diligence process?

City's Response: Under BERDO paragraph (p) Disclosure, a report will be published annually on the City's BERDO website. This paragraph states: "The BERDO Administrator shall make Energy and Emissions information for Buildings available to the public on the City's website no later than November 30 of every year, except for 2025, in which it shall make such information available to the public no later than December 15, 2025."

- Section (o) Obligation to Request and Report Information – what leverage does the Owner have if the Tenant(s) disregard/neglect the owner's request for energy usage data?

City's Response: We have been working with the utilities, as Kara Marshall of Eversource and Lori Timmerman of National Grid testified at the June 10th public hearing, to enable building owners to obtain tenant data through a utility portal set up for this purpose. Also, we expect that the State data base that will be published annually starting October 2025 will contain this data. If all else fails, Section 1 (o) 3 of BERDO requires that: "When an Owner of a Building is unable to obtain complete Energy use data due to the failure of any Tenant to report the information required, the Owner shall use values or formulas established by the BERDO Administrator to estimate whole Building Energy use."

- Will Newton work with the utility companies to enable the ownership/management group to acquire the necessary data required for reporting in the event that a tenant fails to report? What legal remedies exist if the tenant is uncooperative?

City's Response: The City has been working with both Eversource and National Grid to provide access to use data by the building owners. They have agreed to provide training to building owners and we will make arrangements with them for that training. As

mentioned in the previous bullet, the City will provide values or formulas to the owner for tenant data if all else fails.

The answer to the previous bullet provides more information about this issue.

- Will installation of current transducers and gas meter reads be considered acceptable forms of data collection to avert and owner's dependence on its tenant(s)? If so, a standard for metering should be developed.

City's Response: We do not expect this to be necessary and do not encourage it. If building owners want to install metering, we can address it through regulation if necessary.

- What are the specific conversion factors used for calculating kgCO₂e/sf/yr for both electrical and gas?

City's Response: Under BERDO Section 1 (b), electricity emissions are excluded from calculations of building emissions: "Emissions means the emission of greenhouse gases, measured in units of CO₂e associated with the Energy used by a Building, excluding electricity."

As indicated in the ordinance language, emission factors for natural gas and other combustion fuels will be published through the BERDO regulations. The City anticipates these will be aligned with the ENERGY STAR Portfolio Manager Greenhouse Gas Emissions Technical Reference document, which includes emission factors for natural gas (53.11 kilograms per million British thermal units) and other combustion fuels.

- Can the emission standard formula be published within the ordinance, to ensure that it will not change? CapEx projects have longterm time horizons. There should be some guarantee that the targets will not suddenly change.

City's Response: The emissions standards in the ordinance are fixed. We have no plans to change them. They cannot be changed unless an amendment to the BERDO is passed by the City Council.

- Does the city have legal authority to impose what is essentially a carbon tax on a limited number of property owners defined only by their size?

City's Response: BERDO is not a tax. BERDO requires emissions disclosure and performance benchmarks for properties of a certain size within the City of Newton.

- Is the council willing to wait until the administration's case study at 181 Lexington Street is finalized and evaluated before voting on a final ordinance?

City's Response: We don't think this is necessary but it is likely that, working with Mr. Capasso, we will have the rest of the data by September 2024.

- We all agree about the dangers of greenhouse gas and the need to reduce fossil fuels but since this is the crisis we all can agree upon, why isn't the city proposing BERDO now on single-family homes?

City's Response: We are starting with large buildings because it is manageable and impactful with only 293 commercial buildings accounting for 23% of the Newton's total emissions. When we add large residential buildings, it will be 413 buildings accounting for 28% of Newton's total emissions. There are over 34,000 residential units in the city including over 24,000 single family homes. Implementing a BERDO for this many buildings would be costly to manage and administer. At this time the City is encouraging

voluntary energy efficiency and electrification through its 4 Our Future Program and Energy Coach Program. We are always working on ways to make these programs more effective.

BERDO will be a learning process for all of us. We urge the council to consider it carefully and diligently. We look forward to actively partnering with you and your colleagues to ensure that we get this complex ordinance right.

Sincerely,

Greg Reibman
President & CEO
Charles River Regional Chamber
617-799-0550

CC: William Ferguson, Jaclyn Norton, Mayor Fuller, Barney Heath