



City of Newton, Massachusetts
Department of Planning and Development
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Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: September 12, 2024

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Alyssa Sandoval, Deputy Chief Planner for Current Planning

SUBJECT: **#262-24** COUNCILORS LOBOVITS, LAREDO, BIXBY, FARRELL, OLIVER, KELLEY, MICLEY, BLOCK, WRIGHT, MALAKIE, ALBRIGHT, and LUCAS requesting a discussion with the Planning Department regarding the status of all designated but unspent mitigation funds received by the city. The presentation should include (a) a list of all unspent funds, broken down by project, amount, and date of receipt; and (b) the intended use of the individual funds and the anticipated date of expenditure.

CC: Jonathan Yeo, Chief Operating Officer
Jonah Temple, City Solicitor
James McGonagle, DPW Commissioner
Nicole Banks, Parks and Recreation Commissioner

The purpose of this memorandum is to provide an overview of the status of mitigation funds for special permits and comprehensive permits as a response to a City Council request. The presentation includes regarding the status of all designated but unspent mitigation funds received by the city.

Background

The City of Newton manages mitigation payments associated with the conditions of approval for special permits and comprehensive permits for development projects. The Planning Department keeps an updated list of mitigation funds by development for those projects that still have mitigation funds available and provides an update for the Annual City Budget. Each development project typically has a separate account that where funds are held until expended.

Development Mitigation Funds Update

Attachment A of this memo provides a comprehensive list of all projects currently holding available mitigation funds as of August 2024 as well as anticipated funds for projects that have not yet been issued a building permit. The Planning Department has been working with the Comptroller's office to update the status of all mitigation accounts and balances available as shown. In addition, Planning researched and provided additional information to the spreadsheet that had not currently been available including:

- Comp/Special Permit Number
- Year Approved
- Ward
- Exact condition language

The Comptroller has verified all balances available for use according to the project and account, making updates where necessary. In addition, Planning manages the spreadsheet to include projects that have been approved but have not yet been issued a building permit, which typically triggers the first payments required in the Council Order or ZBA Decision. However, it is important to keep in mind that some funds would never come to fruition, should a project decide not to move forward with applying for a building permit or constructing the project.

Work Plan

The Planning Department coordinates quarterly meetings with an interdepartmental group with representatives from Department of Public Works, Parks and Recreation, Comptrollers, and Law. The goal for this group is to ensure and plan for the expenditure of funds where there are available balances. There are several older development projects before 2019 where mitigation funds are still available. Planning will continue to maintain the tracking of development mitigation funds and work with other departments to communicate when funds are available to be spent, communicate any projects that may not be moving forward, and ensure these funds are expended in an appropriate manner and within the parameters of municipal finance regulations. The Department of Public Works has reviewed the available funds for the various projects and has plans to utilize the funds depending on the project and intended use in accordance with the condition parameters. The next step will be to provide a list of projects for approval by the City Council in accordance with municipal finance law for appropriation of funds to spend the available funds.

The Planning Department will continue to convene quarterly interdepartmental meetings to improve coordination so that the mitigation payments are accounted for and expended for appropriate City projects.

ATTACHMENTS:

Attachment A: Development Mitigation Funds Spreadsheet

Projects	Special Permit/ Comp Permit #	Year Approved	Ward	Project Address	Mitigation	Amount Promised	Avail. Balance	Condition Language
209-211 Adams Street	#12-24	2024	1	209-211 Adams Street	Off-site Transportation/Ped/Safety Mitigation	\$56,675	Anticipated	5. The Petitioner shall make payments in the aggregate amount of \$56,675 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$28,337.50 prior to the issuance of any Building Permit for the Project. b. \$28,337.50 prior to the issuance of any certificate of occupancy (temporary or final) for the Project.
1314 Washington Street	#358-22	2023	3	1314 Washington Street	Captain Ryan Park	\$289,000	Anticipated	12. The Petitioner, at its sold cost and expense not to exceed \$289,000, shall design and construct improvements to Captain Ryan Park. b. In the event the design and construction work described in the approved plans is completed at a cost of less than \$289,000, the Petitioner shall pay the remaining balance of funds to the City to be used for improvements in the immediate vicinity of the Project.
1314 Washington Street (cont)	#358-22	2023	3	1314 Washington Street	TDM Measures	\$70,000	Anticipated	13b: Contribution to the City prior to the issuance of a building permit for vertical construction towards City initiated TDM measures such as a bus shelter, transit, infrastructure, biking, or other measures intended to reduce vehicle trips in the immediate vicinity of the Project.
194 Adams Street	#38-23	2023	1	194 Adams Street	Off-site improvements/traffic calming	\$26,771	Anticipated	17. The Petitioner shall also make payments in the aggregate amount of \$26,771 to the City for off-site improvements, traffic calming measures or other mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$13,385.50 prior to the issuance of any Building Permit for the Project. b. \$13,385.50 prior to the issuance of any certificate of occupancy (temporary or final) for the Project. Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.
Sunrise Assisted Living	#356-22	2023	8	11 Florence Street	Off-site Transportation/Ped/Safety Mitigation	\$311,693	Anticipated	19. The Petitioner shall make payments in the aggregate amount of \$311,692.50 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$155,846.25 prior to the issuance of any Building Permit for the Project. b. \$155,846.25 prior to the issuance of any certificate of occupancy (temporary or final) for the Project. Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.
Sunrise Assisted Living (cont)	#356-22	2023	8	11 Florence Street	City transit improvements	\$23,400	Anticipated	20h. Provide a \$23,400 one-time contribution to the City prior to the issuance of a building permit for vertical construction toward City-initiated transit improvements such as bus shelter, transit, and/or City's shuttle system.
280 Nevada Street	#317-23	2023	1	280 Nevada Street	Off-site Transportation/Ped/Safety Mitigation	\$85,821	\$42,910.50	8. The petitioner shall pay to the City of Newton the sum of \$85,821 (representing 75% of the calculated \$114,428 Inflow & Infiltration fee) for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$42,910.50 at the first building permit for the vertical construction of the Project; and, b. \$42,910.50 prior to the issuance of the first dwelling unit occupancy permit (temporary or final) in the Project. Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.
106 River Street	#447-22	2023	3	106 River St	Transportation Mitigation	\$33,421	\$16,710.50	15. The Petitioner shall make payments in the aggregate amount of \$33,421 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$16,710.50 at the issuance of any Building Permit for the Project. b. \$16,710.50 at the first dwelling unit certificate of occupancy (temporary or final) in the Project.
136-144 Hancock Street	#394-22	2022	4	136-144 Hancock Street	Pedestrian/ safety improvements	\$88,973	Anticipated	15b. \$88,973 toward pedestrian and safety improvements in the immediate vicinity of the area. This payment shall be made to a municipal account dedicated to such improvements and funds from the account shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. (note: Prior to building permit).

1114 Beacon	#71-20	2021	6	1114 Beacon	Area improvements	\$178,517	\$89,258.33	20. The Petitioner shall make payments in the aggregate amount of \$178,516.65 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$89,258.33 at the issuance of any Building Permit for the Project. b. \$89,258.32 at the first dwelling unit certificate of occupancy (temporary or final) in the Project, less the cost and installation of the bus shelter referenced in Condition #21 below.
967 Washington	#293-21	2021	6	967 Washington	Area improvements	\$221,182	Anticipated	23. The Petitioner shall make payments in the aggregate amount of \$221,181.75 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$110,590.38 at the issuance of any Building Permit for the Project. b. \$110,590.37 at the first dwelling unit certificate of occupancy (temporary or final) in the Project Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.
Green Lady Marijuana Establishment	#125-21	2021	6	740 Beacon Street	Transportation	\$5,000	\$5,000	15. Prior to the issuance of a building permit, the Petitioner shall implement a Transportation Demand Management Plan to reduce vehicle trips to the site as described in a memorandum dated May 3, 2021 on file with the Planning Department and the City Clerk, to be reviewed and approved by the Division of Public Works and the Planning Department. These measures include but are not limited to: a. A one-time \$5,000 payment to the City's bike share system.
333 Nahanton	#179-21	2021	8	333 Nahanton	Transportation	\$487,522	\$243,761	26. The Petitioner shall make payments in the aggregate amount of \$487,522 to the City for transportation infrastructure improvements in the vicinity of the Project. a. The Petitioner's payments shall be made to a municipal account designated for such mitigation and improvements (hereinafter, the "Mitigation Fund") as follows: i. \$243,761 prior to the issuance of any building permit for the Project. ii. \$243,761 prior to the issuance of any occupancy certificate (temporary or final) for the final dwelling unit in the Project b. The Mitigation Fund shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Ward 8 Councilors, shall recommend projects for funding to the Mayor and the City Council.
267-275 Grove Street	#33-21(3)	2021	4	269-287 Grove Street	Area Improvements	\$150,000	\$75,000	24. The Petitioner shall make payments in the aggregate amount of \$150,000.00 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows: a. \$75,000.00 at the issuance of any building permit for the Project. b. \$75,000.00 at the issuance of any certificate of occupancy for the Project. Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.
Pharmacannis/Verilife	#430-20	2021	7	232 Boylston	Community shuttle	\$25,000	\$25,000	10. Petitioner shall provide administrative support to the City relative to its efforts to establish a shuttle serving the Chestnut Hill business community. In that regard, the petitioner will organize and host a kickoff meeting for major area property owners and businesses. The petitioner shall collaborate with the City's Planning Department and Transportation Division on identifying the optimal route and service radius and shall make a one-time payment to the City of \$25,000 in advance of the issuance of any Building Permit pursuant to this Special Permit to be used as the City sees fit for the planning and development of the shuttle.
Riverdale/Comp Permit	CP #01-20	2020	1	2-4 Los Angeles St	TDM	\$100,000	\$33,333	56d. Amended. Providing the City with a contribution of \$100,000. The funds are to be used for such transportation purposes as the City deems appropriate, including without limitation, NewMo. These funds shall be paid in three equal installments: the first on February 1, 2022, the second on August 1, 2023, and the third on February 1, 2024.
Dunstan East	#09-19; #09-19(2)	2020	3	1149 Washington Street, Dunstan East	Washington Street	\$50,000	\$50,000	24. Prior to the issuance of any building permit for the Project, other than a demolition permit, the Applicant shall make a payment in the amount of \$50,000.00 to the City to be used for feasibility, design, or pilots of transportation/streetscape improvements to Washington Street in furtherance of the City's implementation of the Washington Street Vision Plan.
Dunstan East (cont)	#09-19; #09-19(2)	2020	3	1149 Washington Street, Dunstan East	Elm St. Park Playground Improvements	\$150,000	\$150,000	32. The Applicant shall pay to the City of Newton, or its designee, the sum of \$100,000 for improvements to the Elm Street Park Playground and the sum of \$50,000 for improvements to the Wellington Park Playground prior to issuance of any building permit for vertical construction.

280 Newtonville	#244-20	2020	2	280 Newtonville	Cabot Park Improvements	\$120,027	Anticipated	18. The Petitioner shall pay the sum of \$120,027 for improvements to Cabot Park prior to issuance of any certificate of occupancy (temporary or final) for the first dwelling unit in the Project.
166 & 182-184 California	#483-18	2019	1	166 & 182-184 California	Transportation Improvements	\$5,000	\$5,000	8. Prior to the issuance of any building permit for the Project, the petitioner shall pay the sum of \$5,000 to the City for the cost and installation of transportation improvements to California Street and/or adjacent public ways.
Redi Marijuana Establishment	#41-19	2019	5	24-26 Elliot	Road Safety Audit	\$25,000	\$6,000	9. Prior to the issuance of any building permit for the project, the petitioner shall make a payment to the City for \$25,000 to be used by the City to: a) conduct a Road Safety Audit (RSA) of the intersections of Boylston Street/Route 9 and Elliot Street as well as Boylston Street/Route 9 and Ramsdell Street; and b) implement certain improvements recommended by the RSA.
Northland	#426-18	2019	5	Mixed Use project at 156 Oak and 55 Tower Road	Offsite transportation improvements	\$5,000,000	Anticipated	13. The Petitioner shall make payments in the aggregate of \$5,000,000.00 to the City for offsite traffic mitigation and improvements. A description of categories for possible projects for offsite mitigation is attached hereto as Exhibit B, and the Director of Planning and Development, after consultation with the Commissioner of Public Works and the Petitioner, shall recommend projects for funding to the Mayor and the City Council. The Petitioner's payments shall be made as follows: a. \$2,500,000.00 at the first building permit for a residential building in the Project. b. \$2,500,000.00 at the first residential unit occupancy permit (temporary or final) in the Project.
Northland (cont)	#426-18	2019	5	Mixed Use project at 156 Oak and 55 Tower Road	Countryside School	\$1,500,000	Anticipated	14. The Petitioner shall make payments in the aggregate amount of \$1,500,000.00 to the City for improvements to or replacement of the Countryside School. The Petitioner's payments shall be made to a municipal account designated for improvements to the Countryside School as follows: a. \$1,000,000.00 at the first building permit for a residential building in the Project. b. \$500,000.00 at the first residential unit occupancy permit (temporary or final) in the Project.
Garden Remedies	#289-18	2018	2	697 Washington St	Bus shelter	\$25,000	\$25,000	19. Prior to the issuance of any Building Permit for the Project, the petitioner shall pay the sum of \$25,000 to the City for the cost and installation by the City of a bus shelter along the Project's Washington Street frontage. The petitioner shall have no obligation regarding the ongoing maintenance or repair of said bus shelter.
Washington Place/TRIO	#96-17	2017	2	875 Washington Street	Off-site improvements	\$700,000	\$413,500	6. The Petitioner shall make or fund off-site improvements in addition to the off-site improvements required in General Conditions# 4 and 5 and Schedule E in the vicinity of the Project categorized as: (a) streetscape and street beautification initiatives in the vicinity of the Project including the bridge over the Massachusetts Turnpike and MBTA railroad line, and (b) transportation enhancements for all travel modes, including, but not limited to, pedestrian, bicycle, and elements related to the Newtonville MBTA commuter rail station. Within ninety (90) days after the issuance of a building permit for vertical construction, the City Council shall identify the specific improvements to be made under the foregoing categories and the City Council shall either direct the Petitioner to construct the improvements identified by the City Council, at Petitioner's expense, for an amount not to exceed \$700,000, or it shall direct the Petitioner to pay the sum of \$700,000 to the City, which the City shall use to construct the off-site improvements. In the event that the City Council elects to accept payment of \$700,000 for the off-site improvements, funds from the account in which the \$700,000 will be held shall be appropriated to construct the off-site improvements in accordance with municipal finance law. In the event that the City Council directs the Petitioner to construct the improvements and the final cost of the improvements is less than \$700,000, the Petitioner shall pay the balance to the City and the City shall use the funds for additional off-site improvements accordance with the provisions of this condition . In the event that the City Council fails to identify the improvements to be made within ninety (90) days after the issuance of a building permit for vertical construction, in accordance with this condition, then the Petitioner shall pay the sum of \$700,000 to the City and the Petitioner shall have no further obligation with respect to this General Condition #6.
392-404 Langley Road	#285-17	2017	6	392-404 Langley Road	Shuttle	\$50,000	\$20,000	8. The petitioner shall contribute \$5,000 a year for a period of ten years (for a total payment of \$50,000) for the initiation and ongoing operations of a shuttle serving the project site. Said payments to the City shall commence on the date any building permit is issued for the Project and annually thereafter but the petitioner may prepaid in whole or in part at any time. In the event the City determines that a shuttle is infeasible, the funds may be used at any time by the City for any transportation.
392-404 Langley Road (continued)	#285-17	2017	6	392-404 Langley Road	Bicycle Racks	\$1,800	\$1,800	10. Prior to the issuance of any building permit for the Project, the petitioner shall pay for not more than three public bicycle racks, at a cost of \$600 each, which bicycle racks shall be installed and maintained by the City. One of the bicycle racks shall be located on the Langley Road frontage of the Project at a location acceptable to the petitioner and the Director of Transportation.

392-404 Langley Road (continued)	#285-17	2017	6	392-404 Langley Road	Transportation Improvements	\$25,000	\$13,073.50	17. At the Petitioner's sole expense, the petitioner shall use best efforts to locate all utility service lines on site underground, including any utility service lines along the Project's frontage on Langley Road, subject to necessary approvals from the utility companies. In the event undergrounding utilities is infeasible, the petitioner shall contribute \$25,000 to the City for any streetscape improvements in the area from which the Project may benefit. The City will consult with the petitioner regarding the streetscape improvements, but the City shall have the sole authority to decide on the specific improvements to be installed. Said funds may also be used for improvements associated with the Safe Routes to School Program for the Bowen Elementary School.
255 Newtonville Ave	#48-16	2016	2	255 Newtonville Ave	Traffic study/neighborhood improvements and improvements to Cabot Park	\$20,000	\$20,000	5. At the time of issuance of a building permit pursuant to this Order, the petitioner shall contribute \$10,000 towards the cost of conducting a traffic study of the area at East Side Parkway/Newtonville Avenue/Lewis Terrace or other neighborhood improvements and \$10,000 towards improvements to Cabot Park, subject to the approval of the Parks and Recreation Commissioner.
Newton Nexus	#19-15	2015	5	131-181 Needham Street	Newton Upper Falls Greenway	\$10,000	\$10,000	19. In furtherance of the City's proposed Newton Upper Falls Greenway (NUFG) rail trail behind the Property and as a public benefit to the City, the Petitioner agrees: (a) to participate in conjunction with the City of Newton, abutters and other stakeholders in reasonable efforts to promote development of the NUGF, which may include planning and design initiatives and (b) to provide a voluntary contribution of funding to the City in the amount of \$10,000 to be used by the City for the development of the NUGF, and (c) to remove invasive species along the boundary of its site with the NUGF, pursuant to a plan to be reviewed with the Engineering Department. These undertakings shall run with the land for a period of 25 years from the date of this special permit. Any funds collected under this condition and not spent in accordance with this condition at the end of this time period shall be returned to the petitioner or its successors and assigns.
Hardware Store	#121-15	2015	5	2 Windsor Rd.	Mitigation related to impacts of parking waiver	\$2,500	\$2,500	8. Prior to issuance of a certificate of occupancy, the petitioner, at its sole expense, shall either (a) contribute \$2,500 for pedestrian and vehicular safety improvements as noted below, or (b) complete the said pedestrian safety improvements at its sole expense. The pedestrian and vehicular safety improvements consist of the installation of curbing, sidewalks and two driveway aprons along the frontage of the property bordering the parking lot off of Windsor Road. If the petitioner chooses to complete the improvements at its sole expense (Option (b)), the petitioner shall submit final details and plans for such improvements to the City Engineer for review and approval.
The Village Café	#22-14	2014	2	719 Washington St	Mitigation related to impacts of parking waiver	\$2,500	\$2,500	4c. Prior to the issuance of a Certificate of Occupancy, the petitioner agrees to make a voluntary contribution in the amount of \$2,500 to the City of Newton for pedestrian improvements at the intersection of Harvard Street and Washington Street in Newtonville.
Core Power Yoga	#260-13	2013	3	275 Washington St	Parking and ped access improvements Newton Corner	\$2,500	\$2,500	7b. No Occupancy permit for the use covered by this Special Permit/Site plan approval shall be issued until the petitioner has: b. Prior to the issuance of a Certificate of Occupancy, the petitioner agrees to make a voluntary contribution in the amount of \$2,500 to the City of Newton for parking improvements and/or pedestrian accessibility or vehicle circulation improvements in the Newton Corner vicinity to help mitigate the parking impacts in the neighborhood due to the proposed use.
Rox Diner	#189-12	2013	2	335 Walnut St	Parking and ped access improvements Newtonville	\$2,500	\$2,500	2. The petitioner agrees to make a donation of \$2,500 to the City to be used by the City for parking improvements and/or pedestrian accessibility or circulation improvements in the Newtonville vicinity to help mitigate parking impacts on the neighborhood.
O'Hara's Restaurant	#162-12	2012	6	1185 Walnut St	Pedestrian or access improvements	\$2,500	\$2,500	2. The petitioner agrees to make a voluntary donation of \$2,500 to be used by the City for parking improvements and/or pedestrian accessibility or circulation improvements in the Newton Highlands vicinity to help mitigate parking impacts on the neighborhood.
Cherry Street	#280-02(2)	2011	3	1347-1349 Washington St	Traffic signalization	\$2,000	\$2,000	8. Prior to the issuance of a building permit the petitioner shall contribute \$2,000 to the City for the purchase and installation of pedestrian countdown signal heads on the existing traffic signals at the Cherry and Washington Street intersection.
Newton Centre	#213-11	2011	6	54-57 Union St	Maintenance to Union Path	\$5,000	\$5,000	5. The petitioner shall contribute \$1,000 to the City on an annual basis, for as long as it exercises its special permit, or five (5) years, whichever shall first occur. These monies shall be used by the City for such items as pedestrian accessibility and/or landscaping improvements along Union Path and its immediate vicinity including but not limited to planting and landscape maintenance, tree trimming and installing replacement lighting to replace burned out or broken lights. This work shall be performed by the City under the direction of the Commissioner of Public Works and/or other appropriate departments as necessary. Funds shall be placed in an account created by the City with the funds to be directed for the above referenced categories. Any funds not expended by the Commissioner of Public Works shall be rolled over for use in succeeding years. The first payment due to the City shall be triggered upon the application for a Certificate of Occupancy for this special permit.