

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JANUARY 4, 2005

Present: Ald. Fischman (Vice Chairman), Ald. Salvucci, Albright, Vance, Harney, Mansfield, and Samuelson; absent: Ald. Merrill;

Also present: Ald. Hess-Mahan and Baker

City staff: Ouida Young, Associate City Solicitor, Michael Kruse, Director of Planning & Development, Lou Taverna, City Engineer, Linda Finucane, Chief Committee Clerk

#470-04(2) CITY ENGINEER requesting the Land Use Committee hire outside consultants, pursuant to Section 6 of the Rules and Orders of the Board of Aldermen, to review the drainage plans and traffic study submitted by Newton Wellesley Hospital in Special Permit petition #470-04 .

ACTION: APPROVED 6-0-1 (Samuelson abstaining)
BOARD APPROVAL NOT NECESSARY.

NOTE: City Engineer Lou Taverna explained that he lacks sufficient staff to review the drainage plans and traffic study submitted in Newton Wellesley Hospital's petition for a special permit to relocate and construct a new emergency room with attendant parking scheduled to be heard on January 13th. He wishes to engage the two consultants (Traffic Solutions and Woodard Curran Engineering) the City used to review the Arbor Point at Woodland Station Comprehensive Permit petition. Both Messrs. Taverna and Kruse feel their familiarity with the area is a benefit, and were pleased with their reviews of the Woodland project.

Ald. Salvucci asked why this hadn't been requested earlier on and whether the Hospital knew about it. Mr. Kruse explained that, although the conceptual plans have been ongoing for approximately a year, the petition in its final form was filed in December. The Hospital has agreed to pay for whomever the City's chooses. Ald. Harney expressed some reservations about hiring the same consultants. He felt that traffic and parking issues associated with the Hospital differ from Woodland. He would like the whole area looked at. Messrs. Kruse and Taverna agreed the traffic consultant in particular would take into account the overall area. Mr. Taverna said the scope of services would be similar to that for Woodland. He expects the drainage review to be completed before traffic. Ald. Albright thought the familiarity with the neighborhood a benefit.

The committee agreed the staff situation and the scale of the proposed project necessitate the hiring of outside peer reviews of both the drainage plans and traffic study submitted by the petitioner.

#267-02(3) LAND USE COMMITTEE recommending discussion and possible adoption of appropriate amendment(s) to the Rules and Orders of the Board re Board communication relative to special permits.

ACTION: APPROVED AS AMENDED 6-0 (Salvucci not voting)

NOTE: The Committee perceived the need for a separate discussion of the matter often referred to as “ex parte” communication at the time the proposed rules and regulations for filing special permits were being considered last spring. After the adoption of these rules, the Law Department and the Planning Department worked with the Chairman and Board President to research how other communities handle this kind of communication regarding special permit petitions between decision makers, applicants and the public outside the public hearing process. Eventually, the Law Department drafted a “Statement of Good Practices” that could serve as guidance for Aldermen and an explanation of these practices for the other parties involved. That draft statement was first reviewed by the Committee at its December 14, 2004 meeting. The discussion at that meeting had begun with a report by Planning Director Michael Kruse of his department’s experience in processing special permit applications since the adoption of the new special permit application rules by the Board in June. Mr. Kruse had reported that the process had been working quite smoothly and that no petitioner who should have been able to file an application has been prevented from doing so by the rules. Aldermen Samuelson, Harney and Fischman had each observed that they had not been getting the expected feedback from either the applicants or the Planning Department on the status of potential applications, and had noted that they often depended upon informal early communication from petitioners or their representatives. Ms. Young commented that such communication was not inappropriate, as long as the information exchanged is brought forward in the subsequent public hearing.

This discussion led directly to a consideration of the draft Statement of Good Practices. Ald. Baker and Ms. Young described the background that led to the development of this policy statement, noting that questions of the appropriateness of ex parte communication have arisen both from the public and some members of the Board, going back to at least 1990. Ms. Young said that the uncommon position of an elected legislative body acting as a special permit grant authority calls for special consideration of this communication. Board members must not only be impartial, quasi-judicial fact-finders but also have to recognize their constituencies and the special knowledge they may have of local conditions, since they are all elected from ward bases, even for at-large seats.

To address these issues, Ald. Fischman suggested that a preliminary advisory presentation be made to the entire Committee in a public meeting, as it done in Boston, where affected neighbors also would have the opportunity to hear about the proposal and comment. Ald. Samuelson and Albright responded positively to that suggestion, but Ald. Salvucci disagreed, saying he preferred to work with small, private meetings. Ald. Harney reported that he has had some success with scheduling preliminary presentations by potential developers with neighbors present, and Ald. Merrill also said that he used this procedure. Ald Vance, however, said that these were all questionable meeting, because in a quasi-judicial sense one should disregard anything one hears from any interested party prior to a public hearing. Ms. Young replied that because these various methodologies are employed by board members, a statement such as the one in front of the

Committee is useful since it is one of principles, not of specific processes. Aldermen, she said, would be expected to apply these principles individually according to their own needs and practices.

Attorney Alan Schlesinger was present and also commented on the draft statement. He said that local attorneys operate by different sets of rules for contact with the Board of aldermen and with the Zoning Board of Appeals, in that they would never call a member of the ZBA to discuss a petition. He said he thought the statement leaned towards the judicial model, rather than the mix that the Board of Aldermen is, and that the primary purpose should be to put information exchange on the public record.

Ald. Fischman suggested that the statement could be improved by some revision, and Ms. Young agreed. Although he considered moving it, eventually the Committee held it for redrafting to incorporate some of the suggestions made.

At the January 4 meeting, the Committee considered a revised draft of the statement. They also considered draft resolution language proposed by Ald. Vance, having agreed the previous month that a resolution was the more appropriate form for the Board to consider, since the statement expresses principles of conduct, and not specific rules. The revised statement is redrafted in three sections, a background explanation of the context, and principles to guide communications before land use petitions are filed, and those that apply to communication regarding active petitions. In general, Committee members were satisfied with the redraft, particularly the emphasis with putting any communication that might occur outside of the public process on the record. Ald. Vance suggested a small revision to make that clear. Ald. Hess-Mahan sought assurance that Board members could continue to get advice from the Law Department on these issues as questions might come up in the future.

Ald. Vance moved approval of the resolution, and the motion was approved 6-0, with Ald. Salvucci, who had left the meeting before this discussion, not voting.

The following auto dealer licenses were approved because they meet the licensing criteria, have no outstanding zoning complaints; have no outstanding traffic complaints or tickets with the Police Department, and owe no money to the City of Newton; and, in the case of the Class 2 licenses, have posted surety bonds with the City.

Auto License Renewals, 2005

#467-03 R.C.'s TOWN LINE AUTO SALES INC.
945 Moody Street
Waltham, 02454 Class 2
APPROVED 6-0 (Salvucci not voting)

#473-03 ECHO BRIDGE SALVAGE INC.
16-24 Maguire Court

Newtonville, 02460 Class 3
APPROVED 6-0 (Salvucci not voting)

#474-03 SCHIAVONE BROTHERS INC.
16-24 Maguire Court
Newtonville, 02460 Class 3

Respectfully submitted,

George E. Mansfield, Chairman