

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, DECEMBER 5, 2012

7:45 PM  
Room 222

Re-appointment by His Honor the Mayor

#285-12 PETER JOHNSON, 121 Fairway Drive, West Newton, re-appointed as a member of the PARKS & RECREATION COMMISSION for a term to expire September 11, 2015 (60 days 12/01/12) [09-14-12 @ 3:04PM]

Re-appointment by His Honor the Mayor

#330-12 ROBERT KLIVANS, 69 Pine Ridge Road, Waban, re-appointed as a member of THE BOARD OF TRUSTEES OF THE NEWTON FREE LIBRARY for a term to expire June 30, 2017 (60 days 01/04/13) [10-16-12 @ 12:21PM]

Re-appointment by His Honor the Mayor

#331-12 THOMAS TURNER, 60 Wyoming Road, Newtonville, re-appointed as a member of THE NEWTON HOUSING AUTHORITY for a term to expire October 18, 2017. (60 days 01/04/13) [10-25-12 @ 10:51AM]

Re-appointment by His Honor the Mayor

#332-12 DANIEL GREEN, 46 Glen Avenue, Newton Centre, re-appointed as a member of THE CONSERVATION COMMISSION for a term to expire October 25, 2015. (60 days 01/04/13) [10-25-12 @ 10:51AM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

#400-12 HIS HONOR THE MAYOR requesting authorization to appropriate the sum of one hundred fifty thousand dollars (\$150,000) from bonded indebtedness for the purpose of funding plumbing and bathroom renovations at the Gath Pool facility. [11/13/12 @ 5:13 PM]

**REFERRED TO PROG & SERV, PUB. FACIL. AND FINANCE COMMITTEES**

#312-10 ALD. LENNON, LAPPIN, SCHNIPPER, SANGIOLO requesting a discussion with the School Committee on its plans to address space needs in the Newton public schools. [10-27-10 @ 11:07 AM]  
**FINANCE VOTED NO ACTION NECESSARY on 10/12/11**  
**PUBLIC FACILITIES VOTED NO ACTION NECESSARY on 11/18/11**

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The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Trisha Guditz, 617-796-1156, via email at [TGuditz@newtonma.gov](mailto:TGuditz@newtonma.gov) or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

**REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES**

#302-12 HIS HONOR THE MAYOR, with the support of Ald. Rice, Crossley, Yates, Fischman, and Kalis, requesting authorization to execute a 99-year lease between the City of Newton and the Massachusetts Bay Transportation Authority (MBTA) for .97 miles of unused MBTA rail bed that runs parallel to Needham Street to create a multi-purpose recreational pathway. [09/24/12 @ 5:00 PM]  
**PUBLIC FACILITIES APPROVED 7-0 ON 11/7/12**

#164-12 ALD. YATES requesting a discussion with the Executive Secretary of the Election Commission and other appropriate officials on how to use City Hall grounds and various other locations around the city to inform Newton voters about the unusual Thursday date of the September primary. [05/24/12 @ 1:41PM]

**REFERRED TO PROG. & SERV., PUB.FAC. AND FINANCE COMMITTEES**

#89-08 ALD. PARKER requesting the following:  
A) review of the maintenance practices for buildings, parks and other properties owned by the City (including School Department facilities and grounds)  
B) development of a comprehensive maintenance plan that includes regular schedules for preventive maintenance for each specific site or facility  
C) a RESOLUTION requesting that implementation of said maintenance plan be funded using operating budget funds.  
[02/13/08 @ 12:07 PM]

**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

**PUBLIC FACILITIES NO ACTION NECESSARY ON 11/3/10**

**ITEMS NOT YET SCHEDULED FOR DISCUSSION:**

Appointment by His Honor the Mayor

- #329-12 NANCY LEVINE, 379 Central Street, Auburndale, appointed as a member of THE ELECTION COMMISSION for a term to expire March 31, 2015 (60 days 01/04/13) [10-22-12 @3:17PM]

**REFERRED TO PUB.FAC, ZONING&PLANNING, PROG & SERV COMMITTEES**

- #316-12 DEPARTMENT HEADS HAVENS, ZALEZNIK, LOJEK requesting amendments to **Sec. 26-30. Licenses for cafe furniture on sidewalks.** to streamline the procedure allowing businesses to place café furniture on public sidewalks. [09/24/12 @3:17 PM]

- #334-12 ALD. SWISTON AND LINSKY requesting a discussion with the Licensing Board regarding the licensing and permit requirements for non-profit organizations [10/10/12 @ 3:52 PM]

**REFERRED TO PROG & SERV. AND PUB. FACIL. COMMITTEES**

- #99-11 ALD. ALBRIGHT, JOHNSON, DANBERG requesting that the Department of Public Works coordinate data on the impact of the snow removal ordinance from the Departments of Public Works, Parks & Recreation, Executive and Senior Services into a monthly report for the winters 2012 and 2013, which will be sent to the Public Facilities Committee that includes the following data: (1) the number of people requesting exemptions; (2) the number of exemptions awarded; (3) the number of warning letters sent; (4) the ability of the City to maintain the same standard regarding treating the surface to preserve safe passage; and (5) cost of the implementation of the program.

**PUBLIC FACILITIES COMMITTEE APPROVED 4-0 on 10/5/2011**

**REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES**

- #245-10 ALD. SCHNIPPER requesting discussion with National Grid regarding the possible damage to trees as a result of gas leaks. [09/01/10 4:00 PM]
- #336-12 HIS HONOR THE MAYOR, ALD. BAKER, FULLER AND LAREDO, requesting a discussion to include possible uses, process, timeline, opportunity for community input and funding sources, with the affected neighborhood community and with members of the Board of Aldermen, on the potential acquisition for passive or active recreational uses of the five acre parcel in Ward 7 on Manet Road currently held by the MWRA as an obsolete open water reservoir. [10-3-12 @ 6:57PM]
- #335-12 DAVID OLSON requesting a discussion of Mayor Warren's Executive Order #1 which authorizes the use of remote participation for City Boards and Commissions as it relates to and effects the Board of Aldermen's Committee and Full Board meetings, and to make any necessary changes to the Board Rules to allow and regulate remote participation should it be deemed acceptable. [10-3-12 @4:56PM]

#333-12 ALD. CROSSLEY AND HESS-MAHAN, on behalf of Green Decade Newton, requesting a discussion and possible Resolution, asking that Newton join the Center for Biological Diversity’s Clean Air Campaign by sending a Resolution to the US Administration and Environmental Protection Agency urging them to assert and enforce certain provisions of the nation’s Clean Air Act in order to help communities achieve cuts in greenhouse gas pollution. [10-11-12 @ 5:05PM]

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

#322-12 HIS HONOR THE MAYOR submitting the FY14-FY18 Capital Improvement Program pursuant to section 5-3 of the Newton City Charter. [10/09/12 @ 2:38 PM]

**REFERRED TO PROGRAMS & SERV. AND PUBLIC FACILITIES COMMITTEES**

#315-12 ALD. FULLER, RICE AND GENTILE of the Angier School Building Committee providing updates and discussion on the Angier School Building project as it develops through the site plan approval process. [10-02-12 @ 3:37PM]

**REFERRED TO PROG & SERV, PUB. FAC., ZAP, AND FINANCE COMMITTEES**

#256-12 ALD. HESS-MAHAN, SANGIOLO & SWISTON proposing and ordinance promoting economic development and the mobile food truck industry in the City of Newton. [08/06/12 @4:46 PM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

#254-12 ALD. HESS-MAHAN, SANGIOLO, DANBERG, KALIS, CROSSLEY proposing an ordinance relating to plastic bag reduction that would add a fee to single-use plastic and paper bags that are not at least 40% post-consumer recycled content, at certain retail establishments in Newton. [07/18/12 @4:34 PM]

**REFERRED TO PUBLIC FACILITIES AND PROGRAMS & SERVICES COMMITTEES**

#231-12 RECODIFICATION COMMITTEE recommending that **Sec. 11-11. Permit to cart trash and/or recyclable materials.** be deleted as G.L.c.111 §31A authorizes the Health Department to require registration. for “garbage,” which is addressed in Sec. 11-5.

#230-12 ALD. SANGIOLO requesting the establishment of guidelines and policies regarding the creation of Neighborhood Area Councils particularly with respect to (1) boundary delineations and (2) description of area council authority. [08-06-12 @4:39PM]

#229-12 RECODIFICATION COMMITTEE recommending a review and possible amendment to the *Board of Aldermen Rules & Orders 2012-2013* relative to review of draft ordinances by the Law Department.

#228-12 RECODIFICATION COMMITTEE recommending that **Chapter 28 VETERANS' SERVICES** be amended by deleting **Secs. 8 through-10**, which refer to “a physician to the department of veterans’ services” – a position that no longer exists.

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

- #185-12 ALD. BAKER, BLAZAR, SANGIOLO, LINSKY, ALBRIGHT & DANBERG requesting that the Board of Aldermen adopt a RESOLUTION to His Honor the Mayor asking that, when the Mayor seeks future Board approval for bonding the cost of additional capital facilities or equipment for the schools, he include in that funding request, as well as in the city-wide Capital Improvement Plan, the estimated costs needed for funding the capital technology needs of the Newton Schools, including the appropriate portions of the estimated project costs of the School Committee's three-year district-wide technology plan not anticipated to be funded by the Information Technology Department budget; the anticipated technology grants from Boston College for the elementary schools; and/or estimated revenue from the E-rate Technology Reimbursement Program. [06/11/12 @ 11:23 PM]

**REFERRED TO PROG & SERV, PUB. FACIL & FINANCE COMMITTEES**

- #170-12 ALD. SANGIOLO, BAKER, BLAZAR, JOHNSON, and YATES requesting the creation of an ordinance to govern the naming of public assets of the City, including the interior and exterior features of public buildings, lands, and water bodies of the City, as well as any public facilities and equipment associated with them, all to serve the best interests of the City and to insure a worthy and enduring legacy for the City's physical facilities and spaces, including appropriately honoring historic events, people, and places. [05/29/12 @ 1:34 PM]
- #165-12 HIS HONOR THE MAYOR submitting (1) the report prepared by Kopelman & Paige PC, the consultant engaged to review the city's election procedures, and (2) proposing that Charter Sections 2-1(b) and 4-1(b) be amended to establish a particular date by which nomination papers are made available. [05/25/2012 @ 1:35PM]
- #145-12 ALD JOHNSON requesting a review by the Solicitor's office as to what constitutes "reorganization" per our City Charter. [05/16/12 @ 10:24PM]
- #144-12 ALD. HESS-MAHAN proposing to repeal the time restrictions for filing special permit applications/site plan reviews for Major Projects during July and August in Article X Section 5 of the Rules and Orders of the Board of Aldermen.
- #68-12(2) ALD. YATES requesting that a detailed inventory of the more than 100 photographs, paintings, drawings and other images of the Civil War, World War I, World War II in the office section of the War Memorial Hall be prepared and a plan be developed for their public display in whole or in part before or during the city's observance of the 150<sup>th</sup> anniversary of the Civil War through 2015 and the centennial of World War I from 2014-2015. [03/23/12 @ 1:43PM]
- #68-12 ALD. YATES, MERRILL asking that the Executive Department develop a detailed plan for the storage of the veterans archives currently housed in the War

Memorial that allows for proper access to the records by veterans, their families, and historians, both amateur and professional. [03-05-12 @ 9:40 PM]

- #67-12 ALD. ALBRIGHT seeking a discussion with the Executive Department regarding a plan and timeline for funding an archivist/records manager position for the city to oversee the preservation, cataloguing, and organization of the city archives; provide guidance and assistance to city departments that are maintaining their own archives in order to ensure that records are preserved, accessible, and maintained; and, plan for future storage needs as the collection continues to expand. [03-12-12 @ 10:28 AM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

- #39-12 HIS HONOR THE MAYOR requesting authorization to establish a revolving account with an annual expenditure limit of \$2,000,000 for the purpose of receiving funds collected by the Newton Schools Foundation in connection with the sale of naming rights for Newton Public School buildings and facilities and to be distributed for the sole purpose of public school education technology and curriculum purposes. [01/30/12 @ 4:18 PM]

**REFERRED TO PROG. & SERV AND PUBLIC FACILITIES COMMITTEES**

- #36-12 ALD. CROSSLEY & FULLER requesting Home Rule legislation or an ordinance to require inspections of private sewer lines and storm water drainage connections prior to settling a change in property ownership, to assure that private sewer lines are functioning properly and that there are no illegal storm water connections to the city sewer mains.
- A) Sewer lines found to be compromised or of inferior construction would have to be repaired or replaced as a condition of sale;
  - B) Illegal connections would have to be removed, corrected, and re-inspected in accordance with current city ordinances and codes, as a condition of sale.
- [01/24/12 @ 8:07 AM]

- #205-11 ALD. SANGIOLO, GENTILE, HARNEY, LINSKY requesting a discussion with the School Committee regarding a proposal to enter into contractual relationships with the Newton Schools Foundation to sell naming rights on behalf of the Newton Public Schools. [06/22/2011 @ 8:32AM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

- #273-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that the Executive and Human Resources Departments develop a comprehensive human capital strategy for the city to include: performance management, talent development, succession planning, and compensation. [07/17/08 @ 9:53 AM]  
**FINANCE VOTED NO ACTION NECESSARY on 3/8/10**

Respectfully Submitted,

Amy Sangiolo, Chairman

## ROBERT L. KLIVANS

## PROFESSIONAL EXPERIENCE

**RIGGS BANK, N.A.**, Washington D.C. **September 2004 – May 2005**  
**Manager, Special Legal Projects** (September 2004-November 2004)  
**General Counsel** (December 2004 – May 2005)

Following my September 1, 2004 retirement from Bank of America, I temporarily relocated to Washington to manage the special legal problems Riggs Bank had encountered with regulators, prosecutors, Congress, and private litigants arising from Bank Secrecy Act reporting deficiencies, principally at Riggs's Embassy Banking business.

- Managed separate outside counsel engaged by Riggs, the directors of both the bank and the holding company, and officers, employees, and the principal shareholder. Counseled Board committees dealing with regulatory, compliance, and legal problems.
- Led efforts to comply with legal aspects of Riggs's outstanding regulatory orders, to resolve criminal and congressional investigations, and to settle or defend civil litigation.
- Managed effort to consummate acquisition by PNC Financial Corporation (which had been entered into in the summer of 2004 and was completed in May 2005).
- Oversaw legal department of Riggs Bank from December 2004 through acquisition by PNC.

**FLEETBOSTON FINANCIAL CORPORATION**, Boston, MA **December 1977 – August 2004**  
**Deputy General Counsel**

- Served as a senior in-house counsel (with various titles) and member of the Law Office management team at Fleet Boston Financial and its predecessors (Bank of Boston 1977 – 1996), BankBoston (1996-1999), (FleetBoston (1999-2004) for over 26 years. (Bank of America acquired FleetBoston on April 1, 2004.)
- Began as counsel in charge of all litigation. Continued that responsibility throughout and also assumed responsibility at various times for legal oversight of regulatory, employment, and problem loan matters.
- Was involved directly in both large and small matters at the Bank and its affiliates (e.g., investment bank, mortgage company, credit card company, Edge Act offices, etc.) throughout my career, including:
  - Litigation: Security, antitrust, and regulatory litigation and investigations, major frauds (and collections), lender liability litigation, class actions (consumer and nationwide, mostly outside New England), international litigation, employment litigation, UCC cases, etc. Direct reporting to Board (Audit Committee) and independent accountants.
  - Regulatory: Responsible for regulatory approval process for acquisitions and divestitures from the 1970's to 2004 (e.g., hearings on CRA issues, constitutional litigation on interstate banking, antitrust issues on major in-market mergers). Direct oversight of Fed and OCC regulatory agreement process in the early 1990's.
  - Workouts: Management of attorneys supporting problem loan areas at BankBoston (to 1999) and later at FleetBoston. Direct involvement in major workout litigation, frauds, sensitive loan situations.
- Have spoken at Continuing Loan Education seminars regionally and nationally for over 20 years on topics ranging from regulatory developments and bank acquisitions to lender liability and consumer class actions.

ROBERT L. KLIVANS, page two

**Palmer & Dodge**, Boston, MA  
Associate in major Boston law firm specializing in general litigation.

1971-1977

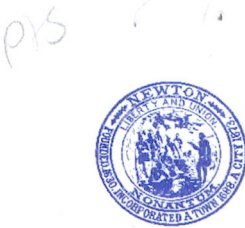
**EDUCATION**

**University of Michigan, B.A. 1968**  
**Harvard Law School, J.D. 1971**

**BAR ADMISSIONS**

Supreme Judicial Court, Commonwealth of Massachusetts  
United State District Court (Massachusetts)  
United States Supreme Court





SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#331-12

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

October 18, 2012

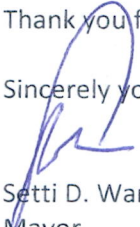
Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Ladies and Gentlemen:

I am pleased to reappoint Thomas Turner of 60 Wyoming Road, Newton as a Board member of the Newton Housing Authority. His term of office shall expire October 18, 2017 and his reappointment is subject to your confirmation.

Thank you for your attention to this matter.

Sincerely yours,

  
Setti D. Warren  
Mayor

RECEIVED  
Newton City Clerk  
2012 OCT 25 AM 10:51  
David A. Oison, CMC  
Newton, MA 02459

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.newtonma.gov](http://www.newtonma.gov)



DEDICATED TO COMMUNITY EXCELLENCE

## **NEWTON HOUSING AUTHORITY**

Harvey Epstein, Executive Director  
Newton Housing Authority  
82 Lincoln Street  
Newton Highlands, MA 02461

Tel: 617.552.5501  
hepstein@newtonhousing.org

August 1, 2012

Honorable Setti D. Warren  
Mayor, City of Newton  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Subject: Re-appointment to Board of Commissioners

Dear Mayor Warren:

We understand that there is a new procedure for the re-appointment of an individual to our Board of Commissioners.

For your consideration, I wish to forward the name of our current Board Member, Thomas Turner, for re-appointment as a Commissioner to the Board at Newton Housing Authority.

Mr. Turner has been an excellent Commissioner and has served our Board well for three terms. Mr. Turner is the current Chairman of the Board of Commissioners of the Newton Housing Authority and has been unanimously voted by the other members of the Board to serve in that capacity.

Mr. Turner's resume is attached. His background in business, particularly with maintenance of large projects has been invaluable. His experience with affordable housing gained through years of involvement has been a great contribution.

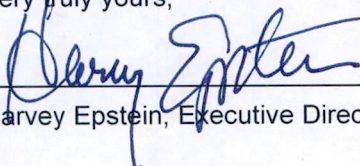
As you may be aware, our Board members serve on a voluntary basis and the position is unpaid.

The Board meets monthly or more frequently if required, and acts as the governance of the Newton Housing Authority. The Board approves all major business matters will vote on contract awards and change orders to contracts. The Board is also very involved in our annual budget requests and oversight.

The Newton Housing Authority during Mr. Turner's tenure has been meritorious. We have been recognized nationally by HUD as a "High Performing Agency". This commendation does not come easily and much work has been done by our Agency to achieve such recognition.

The Newton Housing Authority is requesting re-appointment of Mr. Turner to another term as a Commissioner as we feel his involvement with our Agency is valued for his continued contributions.

Very truly yours,

  
Harvey Epstein, Executive Director

Thomas A. Turner

**Objective:** A position utilizing my experience with construction, supervision, and management.

**Qualified by:** Progressive experience with one company allowing for professional development in the areas of administration, supervision, and cost controls.

**Profile:** Bright, articulate, highly competent, pro-active and resourceful a team player who consistently produces bottom line results.

**Experience:** Retired from the Massachusetts Bay Transportation Authority December, 2005  
 1998 to 2005 Massachusetts Bay Transportation Authority Jamaica Plain, MA  
 Deputy Director of Rail Systems- Duties include; Responsible for all all maintenance and capital improvement activities related to the transit rail system oversees and direct the maintenance of Way Division inciuding supervision of approximately 280 persons establishing work priorities responding 24 hours a day 7 days a week to emergency situations.

1994 to 1998 BJ's Wholesale Club, Natick, MA  
 Facilities Project Manager - Duties include; Manage the day to day maintenance of the retail locations. Soliciting bids from \$2,000 to \$100,000 overseeing work performed by trades. Maintain accounting and inventory control of construction projejects.

1995 to 19 Sr. Facilities Project Manager - Duties include; same as above plus supervision of three people.

1993 to 1994 Self employed - worked for small company building sales. Jet-A-Way Inc. waste company.

1990 to 1993 Waste Not Recycling, Inc. Newton, MA  
 President of a waste paper recycling company. Duties - include starting Company increasing sales from \$0 to \$150,000 in less than 3 years, Administration, wrote all quotes, filed all taxes, ran office, set sll company Policies, supervision warehousemen, schedule all pick ups of truck drivers.

1970 to 1992 Purity Supreme, Inc. North Billerica, MA  
 Vice President Selection and Placement/Equal Employment Oppourtuny

1987 to 1992 Duties include supervise all hiring of a 65 store supermarket chain. Manage a \$262,000 budget, implemented baler/compactor training program. Implemented legal and company required signing program, implemented sexual harassmt awareness training seminars, developed relationship with

the minority community in greater Boston area, handle all EEO complaints.  
1970 to 1987 Vice President Physical Properties Duties include; manage a \$8,000,000  
Maintenance budget, supervise a 15 man maintenance crew, soliciting bids  
from \$2,000 to \$1,500,000 oversee work performed by all trades. Maintain  
accounting and inventory control of construction projects, negotiate  
contracts for, snow plowing, rubbish removal, set up and administer the  
recycling program.  
2002 Appointed to the Newton Housing Authority - Now serving as Vice Chairman.

Education: Bentley College, Waltham, MA  
Associate of Science Degree in Accounting.

References: Personal and professional references available upon request.

# Application for Committee Appointment City of Newton, MA

188.09  
#332-12

Please submit this completed application, or a copy of your resume with a letter stating committee of interest, to Mayor David B. Cohen, Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459.

Name: Daniel Green Date: October 15, 2007

Home Address:

Business Address:

Phone:

Occupation, if applicable: Real Estate Development

Committee(s) you might wish to serve on: Conservation Commission

What activities or issues interest you? Environmental preservation and conservation, green building, sustainable building, and smart growth.

Relevant expertise, experience, and education: Associate Member of Newton Conservation Commission since March 2003. Currently President of The Green Company (real estate developer including The Gables in Newton on Dedham Street). Previously worked at Disney (during design stage of town of Celebration in Orlando Florida) and JP Morgan in NY. BA from Harvard University and MBA from Duke University's Fuqua School of Business. Board of Newton Conservators local conservation and land trust organization) and The Green Building Initiative (national green building non-profit).

List your community activities with offices held, if any: Associate Member of Newton Conservation Commission since March 2003. Board of Newton Conservators local conservation and land trust organization) since 2004 and The Green Building Initiative (national green building non-profit) since 2005. Working with Newton neighbor David Carroll on "Keeping Newton Clean and Green" program to reduce litter in Newton center business and adjacent residential areas. Coach Newton Little League since 2005 and Newton Girls Soccer since 2004.

Please provide the names of three references:

Name	Address	Phone Number
<u>Dan Green</u>		
<u>Wallach</u>		
<u>Michael Peirce</u>		

Feel free to add any additional information in support of this application. While I do not currently vote on the Conservation Commission, I am an active member attending meetings since 2003. Most requests made of the commission involve home renovations, demolition and new construction. On many occasions, my knowledge of construction techniques, area needed for material storage

ance from home that needs to disturbed for restoration work, etc. have allowed the commission to  
ask for less land to be disturbed and to have haybales and silt fence placed in a tighter area to reduce  
effectively. I also appreciate the way the conservation commission operates, helping Newton  
comply with the Wetlands Protection Act while still enabling them to build or renovate the home of  
their dreams or at least the home of their future family memories. Alan Green, my father, previously held this  
position on the commission, and with your permission, I would like to bring my business and development  
expertise to help balance the expertise of the other commission members who excel in legal, education,  
transportation, biological, chemical and scientific areas. I feel I work well with the other members. We greatly  
respect and support each other. This is the way I would like to give back to our community, where I was raised  
since birth and where my wife and I have chosen to raise our four children.

#332-12

# NEWTON PUBLIC SCHOOLS

100 Walnut Street, Newtonville, MA 02460

AREA CODE (617) 559-9025

Office of Business, Finance and Planning

## Memorandum

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TO: David Fleishman, Superintendent

FROM: Sandra Guryan, Deputy Superintendent/Chief Administrative Officer  
Joseph Russo, Assistant Superintendent for Elementary Education  
Cynthia Bergan, Assistant Superintendent for Secondary Education

DATE: November 26, 2012 (6 pm)

RE: Elementary and Middle School Space Recommendations

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As a follow up to the November 1, 2012 elementary and middle school space update, this memo addresses recommendations for managing future growth over the next two to four school years.

### Elementary Recommendations

Six elementary schools have been identified with space needs over the next four years. These schools are Angier, Bowen, Burr, Horace Mann, Lincoln-Eliot and Mason-Rice. In addition, space is needed to address some anticipated special education needs in the district along with some flexibility in the Newton Centre area (Mason-Rice, Bowen, Zervas) where overcrowding exists and classroom space has been exhausted at the existing facilities. It should be noted that included in all the recommendations is a review of current buffer zones with possible expansions or additions to be utilized where an impact on enrollment is achievable. Any changes will be made prior to the kindergarten enrollment timeframe.

For each school, the following four options were considered in the November 1<sup>st</sup> memo:

- Reallocation of Space: Internal renovation or reallocation of space to accommodate more classrooms.
- Modular Classrooms: Installation of new modular classrooms.
- Current Buffer Zones: Expanded use of current buffer zones.
- New Buffer Zones: Explore creating new buffer zones.

The recommendations listed below are in priority order for each school. Buffer zones were explored thoroughly in the November 1<sup>st</sup> memo and will be reserved as an option for all schools.

Angier (one additional classroom needed in 2013-2014 for expected enrollment increase)

1. Reallocate internal space to allow for one more regular classroom. Possible solutions include using the existing specialist spaces as a regular education classroom; there are no more spaces readily available. The district will also examine new students in the current Angier/Countryside buffer zone to consider assigning students to Countryside.

Bowen (three to four additional classrooms to address enrollment growth in 2013-2014 and current overcrowding in grades 1-4)

1. Purchase and install two double-stacked modular units for a total of four new classrooms. The existing modular classroom at Bowen will be moved to another school building, possibly Burr or Horace Mann, resulting in a net increase of three new classrooms. *This recommendation is subject to site constraints.*
2. Reallocate internal space to make use of specialist spaces.
3. Make internal renovations.

Burr (one additional classroom needed in 2013-2014 for expected enrollment increase)

1. Install one modular classroom. This modular classroom may be reallocated from Bowen or a new purchase.
2. Reallocate internal space to make use of a current art room as a regular classroom.
3. Build a new classroom in part of the lower-level cafetorium.

Horace Mann (one additional classroom needed in 2013-2014 for expected enrollment increase)

1. Install one modular classroom. This classroom may be reallocated from Bowen or a new purchase.
2. Renovate internal space to make use of a basement room currently being used by the afterschool program and/or a space located between two modular classrooms.

Lincoln-Eliot (one additional classroom needed in 2013-2014 for expected enrollment increase and current enrollment concerns at K)

1. Relocate the preschool program to another building to free up four regular classrooms.
2. Relocate specialist spaces to allow for more regular classrooms.

Mason-Rice (address enrollment concerns in grades 3-5 in 2013-2014, and provide needed flexible classroom and special education space in 2014-15 through 2016-17 at Mason Rice and other South High School feeding elementary schools)

1. Purchase and install two double-stacked modular units for a total of four new classrooms. Note: This will require sprinkler installation.
2. Reallocate internal space to make use of one basement classroom currently being used by the afterschool program; there are no more spaces readily available.

### **Middle School Recommendations**

Three middle schools have been identified with space needs over the next two years including Bigelow, Brown and Oak Hill. The Day construction project will be completed by next fall; the addition of six new classrooms will provide enough capacity for the next several years of enrollment at Day. In addition, part of the need for space is the adjustment of large team sizes that have increased over the past few years at all four middle schools.

Enrollments at the middle schools for 2013-2014 indicate the need for *at least* one additional half team at all four middle schools, requiring at least two additional classrooms at Bigelow, Brown and Oak Hill. The recommendations listed below are in priority order for each school.

Bigelow (two additional classrooms needed in 2013-2014 for expected enrollment increase)

1. Create a new Bigelow/Day buffer zone in the Cabot district currently feeding into Bigelow, to allow flexibility in enrollment between the two middle schools. This buffer zone will allow the move of up to 34 students from Bigelow to Day in 2013-2014.
2. Review location of the specialized program temporarily housed at Bigelow during Day construction.

Brown (two to four additional classrooms needed in 2013-2014 for expected enrollment increase)

1. Reconfigure existing space to add two to four additional classrooms.
2. Relocate special education or other districtwide programs.

Oak Hill (two additional classrooms needed in 2013-2014 for expected enrollment increase)

1. Reconfigure existing space to add up to two additional classrooms.
2. Relocate special education or other districtwide programs.



**Elementary School Classrooms Needed and Recommended Solutions  
FY13 through FY18**

Schools	Number of Additional Classrooms Needed (Arrays)							Recommended Solutions:
	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	Total	
<b>North Feeding:</b>								
Burr		1		1	1		3	One Modular; Reallocate Internal Space; Buffer Zone to Franklin
Cabot					At Carr	At Carr	0	New School by 2018-19
Franklin	1				1		2	Districtwide Program will be fully relocated by 2015-16
Horace Mann		1					1	One Modular; Reallocation of Space; Buffer Zones to Lincoln-Eliot or Franklin
Lincoln-Eliot		1		1			2	Relocate Preschool; Reallocate Internal Space
Peirce					1		1	Buffer Zones; Reallocation of Space
Underwood	2	1					3	Space Available
Ward	1				1		2	Space Available
<b>Total North Feeding</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>14</b>	
<b>South Feeding:</b>								
Angier	1	1	At Carr	At Carr	1	1	4	Buffer Zone to Countryside; Reallocation of Space; New School by 2016-17
Bowen	1	1				1	3	Replace single modular with 2 doubles (site dependent); Internal Space; Buffer Zones
Countryside					-1		-1	Space Available
Mason-Rice		1					1	Four Modulares (2 doubles; sprinklers required); Buffer Zones
Memorial-Spaulding	1						1	
Williams				1			1	Mid-range Expansion by 2018-19 (City CIP)
Zervas						1	1	Full Expansion by 2017-18
<b>Total South Feeding</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>10</b>	
<b>Total Elementary</b>	<b>7</b>	<b>7</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>24</b>	
Total # classrooms	263	270	270	273	277	280		
Average Class Size	22.0	21.7	21.9	21.8	21.6	21.5		
Projected Enrollment	5,790	5,851	5,935	5,975	6,003	6,048		
Enrollment Increase from Prior Year	103	61	84	40	28	45		
Cumulative Enrollment Increase		164	248	288	316	361		



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

302-12

Telephone  
(617) 796-1100

Telefax  
(617) 796-1113

TDD  
(617) 796-1089

[swarren@newtonma.gov](mailto:swarren@newtonma.gov)

November 5, 2012

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

RE: MBTA 99-Year Lease for Right of Way, Docket Item #302-12

Dear Ladies and Gentlemen:

This letter is in response to the joint meeting with Public Facilities and Programs and Services Committees regarding questions pertaining to the subject docket item, specifically addressing the potential for City liability due to possible exhumation of hazardous materials when constructing the proposed rail trail. I've attached legal review of each question from the Assistant Solicitor, Bob Waddick. Included is a matrix of 15 communities who have, or are in the process of, constructing rail trails on land purchased from the MBTA.

In answer to the question as to whether the Administration feels the City is adequately protected from risks of encountering hazardous materials during the conversion from a rail bed to a walking trail, further analysis supports that the conclusion that the City proceed with the purchase of a \$3 million policy with a 5-year term as allowed under the Brownfields Program. Doing so negates the requirement for the City to indemnify the MBTA from liability and yet provide some level of protection should mitigation of hazardous materials found on site be necessary.

Should you have further questions about the various issues pertaining to the MBTA lease for conversion to a rail trail, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Robert R. Rooney".

Robert R. Rooney  
Chief Operating Officer

Encl.

**CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM**

DATE: November 2, 2012  
TO: Robert R. Rooney, Chief Operating Officer  
FROM: Robert J. Waddick, Assistant City Solicitor  
RE: Docket #302-12 - Questions re Proposed 99 Year lease With MBTA

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At the joint committee meeting held on October 3, 2012, legal questions were raised regarding the above referenced matter. Below, are responses to those questions after review from the Law Department.

**Question 1.** Have other communities in the Commonwealth that have developed rail trails found contamination?

*Answer 1.* Contact was made with Transit Realty, which manages the MBTA's real estate, who reported that it is not aware of any contamination found in the course of the development of more than a dozen rail trails on MBTA property throughout the Commonwealth. Transit Realty has been involved in all of the rail trail projects on MBTA property. On the Malden rail trail, there was contamination which was known prior to the execution of the lease, and it is our understanding neither the MBTA nor Malden is the party liable for the contamination. Attached is a chart which summarizes the towns known to have developed rail trails and whether the municipality purchased environmental insurance and whether there was contamination found during the development of the rail trail.

**Question 2.** If the MBTA exercises its right to terminate the Lease with the City, what is the City's exposure if contamination is discovered after the MBTA has retaken possession of the property?

*Answer 2.* The Massachusetts Oil and Hazardous Material Release Prevention and Response Act, commonly referred to as Chapter 21E, sets forth the framework for addressing and assessing liability for the release or threat of release of hazardous substances. An amendment to Chapter 21E passed by the legislature in 2003, exempted cities and towns that lease a site from the MBTA for the purpose of maintaining a rail trail from the definition of "owner" or "operator" under the statute.<sup>1</sup> This is significant because the liability provisions of Chapter 21E, which are set forth under Section 5 of the statute, are triggered by the "owner" or "operator" status. A city or town would be considered an "owner" or

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<sup>1</sup> Chapter 21E sets forth the conditions that a municipality must adhere to in order to maintain its exemption from the status of "owner" or "operator." Among them are the following: a municipality cannot cause or contribute to the hazardous release or threat of release; a municipality must take reasonable steps to prevent the exposure of persons to hazardous materials; must notify the Department of Environmental Protection of releases or threats of releases; and must take the appropriate action to protect the health and safety of the public if there is an imminent hazard.

“operator” under the statute only with respect to a release or the threat of a release of hazardous material that occurs while the city or town is in possession of the MBTA property.

Therefore, if a release or threat of release of hazardous material first occurs after the MBTA has retaken possession of the rail trail property from the City of Newton, it does not appear that the City would be liable as an “owner” or “operator” under Chapter 21E. However, because the timing of a release or threat of release is a factual determination, the City could incur legal and consulting expenses defending its position even if it is ultimately determined that the release or threat of release of hazardous material is unrelated to the City’s use of the property and occurred at a time when the city was not in possession.

**Question 3.** Can the City purchase a higher amount of environmental insurance under the Brownfields Program and extend the coverage beyond five years?

*Answer 3.* It is possible to increase the amount of coverage under the Brownfields Program (BRAC) which provides matching funds. The BRAC Program will cover 50% of the premium up to \$150,000.00. However, the BRAC Program and the state law which authorizes it, cover insurance premiums for policies of five years, so the coverage period cannot be extended. As the 50% matching funds from the BRAC Program is a one-time grant, it would not be available if the City wanted to renew its environmental policy. We have requested quotes for coverage of \$5 million and \$10 million but it is likely to be proportionate to the \$3 million policy quoted at \$41,035 (matching funds puts a cost to the City at \$22,159 as some fees are not covered under the match).

**Question 4.** Has the MBTA done any testing of the rail bed for contamination?

*Answer 4.* It is extremely unlikely that the MBTA has done any testing. Even though the MBTA is the owner of the railroad property, it has never actually operated any service on the property in Newton (it was leased out to freight haulers such as CSX). Transit Realty reports that it does not believe that any environmental testing has been done.

**Question 5.** What would happen if a parcel abutting the rail trail is developed in the future and contaminants emanating from the rail trail is discovered ?

*Answer 5.* (See answer to Question 2 for general explanation of City’s liability under Chapter 21E). If the release of hazardous material is attributable to the City’s use of the property, then the City will be viewed as an “owner” or “operator” of the site and will be subject to the provisions of Chapter 21E with respect to liability. The timing of the release of the hazardous material will be important in assessing the City’s potential liability. If the facts indicate that the release predates the City’s possession, then it would be unlikely that the City would be viewed as the “owner” or “operator” for the purposes of liability under Chapter 21E. However, because the timing of a release is a factual determination, the City could incur legal and consulting expenses defending its position even if it is ultimately determined that the release of hazardous material is unrelated to the City’s use of the property and occurred at a time prior to the City’s possession.

Figure 1. Rail Trail Conversions -- Experience with Hazardous Materials

	<u>Community</u>	<u>Environmental Insurance</u>	<u>Hazardous Contamination</u>	<u>Notes</u>
1	Danvers	NO	NO	
2	Malden	NO	NO*	*pre-condition existed
3	Wenham	NO	NO	
4	Topsfield	NO	NO	
5	Rockland	NO	NO	
6	Lynn	NO	NO	
7	Saugus	NO	NO	
8	Methuen	NO	NO	
9	Peabody	NO	NO	
10	Newburyport	NO	NO	
11	Acton	YES	NO	
12	Salem	Pending		
13	Wakefield	Pending		
14	Newton	Pending		
15	Needham	Pending		

**CITY OF NEWTON  
LAW DEPARTMENT  
MEMORANDUM**

DATE: September 24, 2012  
TO: Robert R. Rooney, Chief Operating Officer  
FROM: Robert J. Waddick, Assistant City Solicitor  
RE: Rail-trail/Greenway Project-MBTA Lease

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The following is a brief summary of the key terms and conditions of the proposed lease between the City of Newton and the MBTA:

- 99-year lease of a railroad right-of-way that runs from the Newton/Needham line (at Charles River) to a point just beyond the National Lumber property (vic Easy Street). The right of way runs parallel to Needham Street.
- Within right-of-way the City shall designate and construct a corridor for bicycle, pedestrian and other non-motorized public transportation, recreation and associated purposes, free of charge.
- City obligated to follow Best Management Practices promulgated by the Massachusetts Department of Environmental Protection during the development of the corridor.
- Design of corridor subject to MBTA approval.
- City shall maintain the right-of-way during the term of the lease.
- City's self-insured status shall satisfy insurance requirements under the lease, except that City shall obtain environmental insurance.
- MBTA may terminate the lease upon two (2) year's written notice to the City and may terminate non-corridor portions of the lease upon one (1) year's written notice.
- No reimbursement for early termination by the MBTA
- MBTA assumes no warranty and City accepts all risk of entry