

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JANUARY 6, 2010

Present: Ald. Sangiolo (Chairman), Linsky, Hess-Mahan, Rice, and Blazar

Absent: Ald. Merrill, Baker and Fischman

Others present: Clint Schuckel (Traffic Engineer) and Karyn Dean (Committee Clerk), Doris Tennant and Ellen Lubell

Appointment by His Honor the Mayor

#414-09 MARIAN KNAPP, 6 Bellingham Street, Newton Highlands, appointed as member of NEWTON COUNCIL ON AGING for a term to expire November 1, 2012 (60 days 2/19/10).

ACTION: **APPROVED 5-0**

NOTE: Ms. Knapp addressed the Committee. She said she was a member of the Advisory Council on Aging. As a caregiver for older adults during her lifetime, she became more interested in the needs of the aged and went back to school. She recently received a Doctorate in Aging with her dissertation on aging in suburbia – and her research was done in Newton. (A copy can be found at the Newton Library). She found that the vast majority of older people live in suburbia yet there was very little research or literature on the subject. She would like to bring her knowledge into the community and she has worked with Jayne Colino, Director of Senior Services, to find the best way to do that. Ms. Knapp would like to make the information and resources available to seniors more accessible to them. She is working on documenting on all assets that are available in Newton. Ms. Knapp said she felt that “senior” issues pertain to all people, not just those over 60 years of age. Many people are involved in caring for seniors or assisting them in some way so the issues spread throughout the population. She also works with community groups on other issues as well.

The Committee voted to approve Ms. Knapp’s appointment.

#413-09 ALD. COLETTI & SALVUCCI proposing an amendment to the Rules & Orders of the Board of Aldermen to amend Article I, Section 2D, to read “The president shall serve as an ex-officio member of the Finance Committee with the right to vote in case of a tie vote, unless the president is appointed to serve as a regular member of the Finance Committee, then the vice president shall serve as an ex-officio member of the Finance Committee with the right to vote in case of a tie vote.

ACTION: **APPROVED AS AMENDED 5-0**

NOTE: Ald. Hess-Mahan explained that the current Board Rules state that the President shall serve as an ex-officio member of the Finance Committee, with the right to vote only in case of a

tie vote. This seems to say that the President can not serve as a regular member of the Finance Committee. Ald. Hess-Mahan asked several members of the Board if they knew why this was in the Rules and no one could recall. He felt this didn't seem to be an issue with members. Ald. Linsky agreed and didn't think there was a reason to prohibit a President from serving on the Finance Committee. He also noted that a tie vote would be reported out as "denied" so wasn't sure why a tie breaking vote would be necessary at all. Ald. Hess-Mahan wanted to find out what Ald. Salvucci's thoughts were in providing ex-officio status for the Vice President in the docket item. Ald. Salvucci was unable to attend the meeting, but sent a message that his primary purpose was to delete the Rule prohibiting the President from serving on the Finance Committee. Ald. Linsky proposed deleting Section 2. D. completely to accomplish this and Ald. Sangiolo agreed.

Ald. Linsky moved to amend the docket item to remove Article I, Section 2. D. entirely from the Rules. The Committee voted in favor of approval.

#394-09 ALD. BAKER requesting clarification of the Rules of the Board regarding referrals to Committee of appeals of decisions of the Traffic Council. [11/30/09 @ 9:34 AM]

ACTION: **REFERRED TO RULES SUBCOMMITTEE AND HELD 5-0**

NOTE: Ald. Baker was unable to attend the meeting. Ald. Linsky said this item was seeking to clarify to which Aldermanic Committee Traffic Council appeals would go. He noted that there have been 3 appeals thus far. Ald. Linsky felt that since Traffic Council was borne out of the Public Safety and Transportation Committee, the thought was all appeals would go back to them. The Rules don't specifically state that appeals always have to go to Public Safety and Transportation Committee however. Ald. Hess-Mahan said the entire Board ultimately votes on all items so it wouldn't matter very much which Committee heard the appeal.

Clint Schukel, Associate City Engineer, addressed the Committee. He functions as the Traffic Engineer for the City of Newton. He explained that until 1998 the Board would take every single stop sign, parking request, etc. and it bogged the Committees down considerably. In 1998, the Traffic Council was formed to handle these requests. Its members include a member of Public Works, Planning, a citizen representative and a Board representative, usually the Chairman or Vice Chairman of the Public Safety and Transportation Committee. Two years ago about 100 pages of City Ordinances were eliminated by taking all the site specific items out and made a Regulation book instead. The Traffic Council acts independent of the ordinance and Board process unless there is an appeal. Of the 100 items taken up in the last 2 years by Traffic Council, only 3 have been appealed. The Rules have not been changed since the Traffic Council was formed. The question is whether appeals should always go to Public Safety and Transportation, or should the President have some discretion in assigning the appeals to other Committees. Mr. Schukel stated he was in favor of giving the President some discretion. In some cases, the Committee with the related expertise may be more suitable. Ald. Hess-Mahan could see the wisdom in that and he wanted there to be a consistent set of rules governing appeals.

Ald. Linsky felt that all appeals should go to the Public Safety and Transportation Committee. He wanted the appeal process to be transparent and for people to know what to expect. He wanted a consistent appeal process. When they were moving the traffic issues out of the ordinances and into Traffic Council, Ald. Sangiolo said the Board received a memo from Ald. Vance assuring them that any appeal from Traffic Council would go back to the Public Safety and Transportation Committee. Several members of the Committee felt this item should go to the Rules Subcommittee for further review. The Committee voted to hold this item and refer it to the Rules Subcommittee.

Rules Subcommittee

The Committee voted to create a Rules Subcommittee. Ald. Baker had sent word that he would like to serve on the subcommittee and Ald. Hess-Mahan and Ald. Linsky also volunteered.

REFERRED TO PROG & SERV AND PUB SAF & TRANSP COMMITTEES

#394-09(2) ALD. BAKER requesting clarification in **Section 19-33** and **Section 19-34** of the City of Newton ordinances relative to appeals from the Traffic Council. [12-29-09 @ 11:16 AM]

ACTION: **NO ACTION NECESSARY 5-0**

NOTE: Clint Schukel said that he spoke to Marie Lawlor in the Law Department. The Law Department's opinion is that an ordinance change is not necessary to address this issue. The current ordinance reads that the Traffic Council appeal item is placed on the Board docket and treated as a new item. He suggested voting No Action Necessary on this item as it seemed unnecessary. The Committee voted No Action Necessary on this item.

#383-09 ALD. LINSKY AND HESS-MAHAN requesting adoption of a RESOLUTION to be forwarded to the President and Attorney General of the United States along with Newton's congressional delegation in conjunction with similar resolutions and actions being taken by communities nationwide to: urge Congress to repeal the ban on releasing cleared detainees into the United States, and; welcome, in particular, a cleared detainee into our community who was represented by two Newton attorneys who were recognized for their efforts by the Newton Human Rights Commission as soon as such ban is lifted. [11/10/09]

ACTION: **APPROVED 5-0**

NOTE: Ald. Sangiolo noted that this item was briefly discussed at the December 2009 Programs & Services Committee meeting. Ald. Linsky introduced Doris Tennant and Ellen Lubell as the lawyers who had been working with the particular detainee (Abdul Aziz Naji) mentioned in the docket item. A draft of the proposed Resolution is attached to this report, as well as a more detailed explanation of the impetus behind the resolution and a profile of Mr. Naji.

Ald. Linsky explained that similar types of efforts were happening across the country, but Newton was amongst the first, along with Amherst, MA. He said the lawyers involved were residents of Newton and had been working with Mr. Naji for four years, pro bono. President Obama had announced that Guantanamo Bay would be closed in the first year of his presidency

so Ald. Linsky felt this resolution was timely. However, the closing has been delayed because a new detention center has not yet been built. Mr. Naji has been cleared for release, however, and Ald. Linsky felt Newton would be a suitable community for him to be in.

Ald. Blazar said he has been following this case from the beginning. He supported the work that Ms. Tennant and Ms. Lubell have been doing and supported the resolution. The U.S. currently bans the release of detainees into the United States. If the ban was lifted, Ald. Blazar wondered what the logistics would be of welcoming Mr. Naji into Newton. Ms. Tennant said given the ban, they were making efforts to find another country in which Mr. Naji could settle, but it has been difficult. They have applied for sanctuary in Switzerland and have received notice that appropriate bureau would be taking a closer look at Mr. Naji's application. They felt this was extremely positive. Ms. Tennant said the U.S. has a critical relationship with Algeria and, therefore, didn't want to suggest that they were a human rights abusing country. Mr. Naji does not want to return to Algeria because he is frightened for his safety. Mr. Lubell and Ms. Tennant said they felt that Mr. Naji would always be welcome in their homes. She felt Newton had many resources and a history of offering sanctuary and any city accepting a detainee would need to make resources available to that person. Ms. Lubell and Ms. Tennant said they realized this resolution was bucking the tide and that there was a lot of fear and mistrust. They also understood that while some of that is founded, some is not, and they were looking for sanctuary for someone they felt was worthy of it.

Ms. Lubell and Ms. Tennant said Mr. Naji was a remarkable human being and they've been to see him several times. He's been held for 8 years without being charged with anything and has nowhere safe to go now. They said Mr. Naji knew his chances of actually coming to Newton were quite small, but would be grateful for the support. If Newton passed this Resolution, it might help Ms. Lubell and Ms. Tennant get him resettled somewhere else – it would show other countries that if it were possible, a community would be willing to have him. Ald. Linsky said the Human Rights Commission and Newton Dialogues on Peace and War would be weighing in on this issue. The Newton Clergy Association has been sent information about this as well. They felt this would be a community effort. The Human Rights Commission will be meeting later this month.

Ald. Linsky moved approval of this item and the Committee voted in favor.

Respectfully Submitted,

Amy Sangiolo, Chairman

ABDUL AZIZ NAJI

ALGERIAN GUANTÁNAMO DETAINEE IN NEED OF PROTECTION

Abdul Aziz Naji describes his situation as “dancing between fires.” If he were returned to Algeria, he would face threats to his life and safety from both the Algerian government and from fundamentalist insurgents. He was brought to Guantánamo as the victim of a Pakistani house raid in the chaotic aftermath of the U.S. invasion of Afghanistan. Yet, he remains in Guantánamo because no country will advocate for his release.

Summary

Abdul Aziz Naji is a young Algerian man who has been imprisoned in Guantanamo since 2002. He was cleared for transfer in May 2009, by the Guantanamo Review Task Force established by President Obama’s Executive Order of January 22, 2009, and now needs a safe country in which to resettle. Prior to his imprisonment, Mr. Naji worked with a social service provider in Pakistan for several months before losing his leg in an accident. Following a year-long recuperation, he was taken by Pakistani forces in a house raid in the months after the U.S. invasion of Afghanistan. Mr. Naji remains in prison because he would be at grave risk if he were repatriated to Algeria and because there is no country that will advocate for his release. If repatriated, he faces likely persecution from the Algerian government because of his association with Guantánamo, and from Algerian fundamentalists, who will likewise associate him with terrorism and target him for recruitment or retaliate against him because of his service in the Algerian Army.

Personal History

Mr. Naji was born in Batna, Algeria in 1975. After sixth grade, he began work in his father’s blacksmith shop and continued in this employment through his teenage years. As a teenager, he and an older brother were attacked by a man from Groupes Islamiques Armés (GIA), a militant Algerian organization, who tried to recruit them. When the brothers refused to join, the man slit open the brother’s abdomen and knifed Mr. Naji in the face. His brother recovered and fled Algeria, but Mr. Naji could not leave as he was required to begin his service in the Algerian Army. After he completed his Army service, he left the country in 1999. He spent 4½ months working as a volunteer in Pakistani-occupied Kashmir with a charitable organization. One night he stepped on a landmine—one of many unexploded ordnance that lace the region—and sustained a serious injury, resulting in the loss of his lower right leg. He was taken to a hospital in Lahore, Pakistan, treated over the course of several months, and fitted with a prosthetic leg. He spent many months in rehabilitation, living with a few generous families in the city who offered to board him.

As a recent amputee with few resources and without a family, Mr. Naji needed to find help in supporting himself. Acquaintances suggested that he meet with an Algerian man in Peshawar who could help him find a wife. While visiting this man in May 2002, Mr. Naji was arrested along with his host during a raid of the man’s house by Pakistani police—one of the many house raids in the area at that time. The reason for his arrest is unknown. It may have been the result of bounties that were offered by the U.S. military to villagers throughout the region to turn in anyone deemed suspicious. Following a lengthy interrogation by the Pakistanis, Mr. Naji was told that they no reason to hold him and he would be released, but instead, he was taken by Americans stationed in Peshawar and brought to Bagram prison and then to Guantánamo.

US Allegations Prior to Task Force Clearance

At the time of his arrest, Mr. Naji was not on a battlefield. He was never accused of involvement in the attacks of September 11, 2001. He was never charged with a crime or accused of engaging in any hostile or belligerent act against the U.S or its allies or anyone else. Until his recent clearance by the Task Force, the U.S. government’s case rested on vague allegations that amounted to nothing but guilt-by-association, derived solely from statements allegedly made by Mr. Naji, under interrogation and having been tortured and by other prisoners presumably under interrogation, and on raw intelligence reports that the U.S. government has itself

described as “not finally evaluated.” There was never any credible evidence to show that Mr. Naji was an enemy combatant or posed any danger or risk to anyone.

The only “evidence” cited by the U.S. government to link Mr. Naji to any form of actual militant activity anywhere was an allegation that at some point in early 2001, while Mr. Naji was in Kashmir, he received military training from the Pakistani organization Lashkar al-Tayyibi (“LET”) and that he was injured by a landmine in Kashmir. While Mr. Naji denied membership in LET and denied receiving military training, he readily admitted that he went to Kashmir to work as a volunteer with LET in its humanitarian services efforts. He understood the organization to be legal and he believed it was his duty as a Muslim to spend some time providing charity to the poor. According to an expert from the Middle East Institute in Washington, D.C., a former analyst at the U.S. Department of State, at the time of Mr. Naji’s presence in Kashmir, LET indeed operated a legal charitable organization that provided humanitarian services in regions such as Kashmir that few local government agencies could reach. LET had a militant wing, as well, which was unofficially sponsored by the Pakistani government, but the military wing was completely separate from the humanitarian assistance wing with which Mr. Naji volunteered.

Fear of Persecution in Algeria

Mr. Naji’s family lives in Algeria and he wants very much to be with them. He knows, however, that if he were forced to return to Algeria, he would likely be subjected by the government to imprisonment, arbitrary detention and torture because he has been branded by the U.S. as associated with terrorism. Mr. Naji’s fears are well-grounded: he was visited in Guantanamo by an Algerian governmental delegation that asked him if he was a member of GIA, the militant Algerian organization that had attacked him and his brother years earlier. He was alarmed that the Algerian government would ask such a thing. It signaled that the mere fact of his incarceration in Guantánamo had triggered an assumed—and false—association with the GIA. Mr. Naji’s military service and his incarceration in Guantánamo would also likely make him a target of violence or recruitment by Algerian fundamentalists actively fighting the Algerian government. For them, his military service could trigger the desire for retaliation and his incarceration in Guantánamo could trigger an assumed association with terrorism.

Urgent Protection Needs

Mr. Naji does not know what the future holds, but his case demonstrates that geopolitics largely determine whether a detainee is released from Guantánamo and safely resettled. His detention is particularly difficult because the prosthetic leg he received in Pakistan was badly damaged when he was beaten by U.S. forces in Bagram and Guantánamo, and although he was eventually provided a new prosthesis, it is poor quality and was not fitted properly. This, combined with a lack of medical attention that any amputee requires, make Mr. Naji’s daily activities arduous for him. He remains, nonetheless highly motivated to work and support himself, and retains a remarkable equanimity of spirit for a man who has been denied freedom for so long.

Legal Representation

Mr. Naji is represented by Doris Tennant and Ellen Lubell at Tennant Lubell, LLC. For more information about him, please contact:

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Resolution to Assist in the Safe Resettlement of Cleared Guantánamo Detainee

WHEREAS, President Obama has declared that the prison at Guantánamo Bay Naval Base will be closed by January 2010; and

WHEREAS, a number of detainees at Guantánamo have been cleared by our government of wrongdoing and have been determined to pose no threat to the United States; and

WHEREAS, one such detainee who was so cleared, Abdul Aziz Naji, is represented by two Newton residents, attorneys Ellen Lubell and Doris Tennant; and

WHEREAS, Newton attorneys Ellen Lubell and Doris Tennant have been recognized by the Newton Human Rights Commission for their efforts on behalf of Mr. Naji; and

WHEREAS, like many of these cleared detainees Mr. Naji cannot be repatriated because, following his many years of imprisonment at Guantanamo, he is essentially stateless and fears the potential harm awaiting him if returned to his home country; and

WHEREAS, Congressional action has mandated that these cleared detainees may not be permitted to enter the U.S. and that our government may resettle them only in other countries, thus resulting in extremely difficult resettlement negotiations with other countries; and

WHEREAS, Newton has historically welcomed refugees from a variety of countries and under many circumstances; and

WHEREAS, Newton's history of supporting human rights makes it fitting that our community provide safe resettlement to a man who has been unjustly imprisoned by the U.S. government at Guantanamo Bay.

THEREFORE BE IT RESOLVED that the Newton Board of Aldermen:

- 1) urge Congress to repeal the ban on releasing cleared detainees into the United States and
- 2) welcome this cleared detainee into our community as soon as such ban is lifted.

And BE IT FURTHER RESOLVED that copies of this Resolution be sent to the President and Attorney General of the United States, the United States Senators for Massachusetts, and the United States Representative for Massachusetts' Fourth District.

**Information to Support Proposed
City of Newton Resolution to
Assist in Safe Resettlement of a Cleared Guantánamo Detainee**

What does this resolution do?

The resolution calls on the Board of Alderman of the City of Newton to:

- Urge the US Congress to repeal its ban on releasing cleared detainees into the United States, and
- Welcome one such cleared detainee into our community.

Who has been detained at Guantánamo?

A large number of men and some boys were sent to Guantánamo after the US military distributed thousands of leaflets offering bounties to local people who turned in “terrorists.” If the US military had at that time conducted competent tribunals, as required by our own military code and the Geneva Conventions, it would have quickly concluded that many of these detainees were never on a battlefield, were innocent bystanders, or had been turned in simply for the bounties. During the Bush Administration, many were transferred to their home countries for political expediency, but nearly 200 remain imprisoned. Now, after nearly 8 years, approximately half of these detainees have been “cleared” by the Obama Administration—determined through careful investigation by multiple federal agencies to pose no danger to the US—or they have been ordered to be released by federal judges following court hearings, with no legal basis found for their detention. These detainees are waiting either to be sent home or to be allowed to resettle safely in other countries.

Why this resolution now?

This resolution asks our community to join with others across the country to look beyond the fear-mongering that would have us believe that all the men at Guantánamo are terrorists. By this resolution, we would insist on applying the precepts of our system of justice by welcoming into our community one detainee, wrongly imprisoned for years and now *cleared* by the Obama Administration, who cannot return to his home country for fear of persecution. By doing so, the City of Newton would offer hope for justice and safe resettlement to at least this one young man and would set an example for other communities across the country.

Why Newton?

The City of Newton has a deservedly proud history of offering sanctuary to those who have been oppressed, and of tolerance and respect for human rights. Through the Newton Human Rights Commission, the City has advanced its mission to treat all individuals and groups with dignity by providing public forums that address issues such as the genocide in Darfur, the Israeli-Palestinian conflict and the Armenian genocide. In 2008, the Human Rights Commission conferred its *Human Rights Award* on two Newton attorneys, Doris Tennant and Ellen Lubell, in recognition

of their representation of a Guantánamo detainee from Algeria, Mr. Abdul Aziz Naji.* Mr. Naji is among the men who have been cleared by the Obama Administration but would face persecution if returned to his home country. Now Newton has an opportunity to act on its commitment to human rights by offering Mr. Naji a chance to resettle here and start his life anew.

How does Newton’s resolution fit into the plan to close Guantánamo Bay prison?

The Newton resolution would stand in contrast to the Congressional ban on resettling cleared Guantánamo detainees in US communities and the “not-in-my-backyard” statements from politicians, both of which have put in jeopardy President Obama’s plan to close the prison. The denial of resettlement is based on a fear of terrorism rather than the fact that most of the detainees have never posed a threat of any sort. The closure of Guantánamo, endorsed by our own military experts since it serves as a key recruiting tool for al Qaeda, can only happen if cleared detainees have somewhere to resettle. Foreign governments also support closure of Guantánamo, but have been understandably reluctant to accept detainees when the US refuses to do so itself. Newton’s offer to welcome a cleared detainee would strongly support closure of the prison.

Should the recent attempted bombing of the Northwest airplane be a concern to us in passing the Newton resolution?

The recent attempted bombing was extremely troubling for many reasons, including its exposure of the continuing vulnerability of US aviation security and its revelation of terrorism developments in Yemen. We believe, however, that the call by several politicians to cease resettlement of cleared Guantánamo detainees is misguided, and that the Obama Administration is correct in its stated intention to continue resettling cleared detainees when appropriate and to close Guantánamo.

Guantánamo was deliberately established by the Bush administration as a prison system beyond the law, where people were imprisoned for years without any individualized judicial assessment of their guilt or innocence. Many detainees were wrongly held, and continue to be wrongly held, having never been involved in any terrorist activity. However, during the Bush administration nearly 500 detainees were simply sent home, among them the Saudi men alleged to have been behind the recent bombing attempt. If assessments had been made, the Saudi men would have been investigated, tried and convicted and would be in a US prison now, and men such as Mr. Naji would have long ago been released. Now, under the Obama Administration, detainees are being properly investigated and are cleared for release *only* when it has been established that they pose no danger to the US. Newton’s resolution focuses solely on a young man from Algeria, who has been wrongly imprisoned for 8 years and who has now been properly cleared and needs a safe community in which to resettle.

* Other organizations have similarly recognized the importance of providing legal representation and due process to the Guantánamo detainees and have also acknowledged the work of Tennant and Lubell. These include the Massachusetts Bar Association (2009 *Access to Justice Pro Bono Award for Law Firms*), Anti-Defamation League of New England (2008 *Honorable David A. Rose Civil Rights Award*), Boston Bar Association (2007 *President's Award*), Southern Center for Human Rights (2007 *Frederick Douglass Award*), and National Legal Aid & Defender Association (2007 *Beacon of Justice Award*).