

CITY OF NEWTON

BOARD OF ALDERMEN

SPECIAL JOINT MEETING

PROGRAMS AND SERVICES COMMITTEE
AND POST AUDIT AND OVERSIGHT REPORT

THURSDAY, JANUARY 18, 2007

Present from Programs & Services: Ald. Johnson (Chair), Merrill, Hess-Mahan, Sangiolo, Coletti, Parker, Baker and Lipof

Present from Post Audit & Oversight: Ald. Merrill (Chair), Albright, Burg, Coletti and Mansfield

Absent from Post Audit & Oversight: Ald. Harney, Schnipper and Fischman

City staff present: Dan Funk (City Solicitor), Sandy Pooler (Chief Administrative Officer) and Shawna Sullivan (Committee Clerk)

REFERRED TO PROG&SERVICES & POST AUDIT & OVERSIGHT

#371-06 ALD. COLETTI respectfully docketing under section 2-11 of the Newton City Charter an investigation of the facts surrounding the failure to properly certify the proper number of citizen signatures relative to the site plan referendum question.

ACTION: **HELD 8-0 IN PROGRAMS & SERVICES**
HELD 8-0 IN POST AUDIT & OVERSIGHT

NOTE: Ald. Johnson asked to address both Committees. She explained that after reviewing all of the questions submitted by members of the Board, she asked the City Solicitor for his input on the process, as the Chairs and Vice-chairs of the Committees made efforts to edit, combine, add and eliminate questions. During the course of the discussion, it became apparent to the Chairs, Vice-chairs and the City Solicitor that certain aspects of the process were legally inappropriate. In particular, by asking questions of Mr. Karg, members of the Election Office staff, President Baker, Mayor Cohen and members of the Election Commission, we would inadvertently stumble into a formal investigation, which would require a vote of the full Board, under the City Charter. In light of that, the Committees must decide whether to make a recommendation to the full Board to pursue a formal investigation, or the Committees must revise the manner in which questions are asked and answered.

Chairman Johnson's initial proposal was to ask the investigator, Mr. Mitnick, a series of questions that would hopefully clarify and elaborate upon the report. At the last meeting, that approach was altered to allow for the asking of questions to anyone. It is now apparent that the Aldermen cannot do that unless the full Board authorizes it.

Ald. Johnson proposed that the Committees go back to her original proposal and ask the questions of Mr. Mitnick. There are reasons, both legal and non-legal why she believes taking this approach is in everyone's best interest. For example, a non-legal rationale is that after seeing all of the submitted questions, to ask them of the various participants is to invite the "he said/she said" dynamic that many expressed a desire to avoid.

As for a legal rationale, Ald. Johnson stated that the City Solicitor informed her that Mr. Karg as a prelude to litigation has filed a claim letter. Therefore, Ald. Johnson made a motion for an Executive Session to discuss how the questioning process might affect the pending litigation. A roll call vote was taken and the motion approved unanimously (Ald. Johnson, Merrill, Hess-Mahan, Lipof, Mansfield, Baker, Burg, Coletti, Albright, and Parker).

After the Committee returned to open session, Ald. Hess Mahan proposed a resolution in the form of a parens (2) to be docketed and referred to the appropriate Committee(s). The resolution requests that the Interim Executive Secretary of the Election Commission inform the Board of Aldermen and the citizens of Newton of any policies and procedures, which have been or are anticipated to be developed or implemented to deal with signature verification for citizen petitions to ensure that all valid signatures are accounted. There was a brief discussion on whether the item should be referred to both Programs & Services and Post Audit & Oversight. Members of Post Audit and Oversight felt that it would be appropriate for the resolution to be discussed in both Committees. Motions of approval in both Committees were made and carried unanimously.

Motions to hold the main item in both Committees were made and both motions carried unanimously.

Respectfully submitted,

Marcia Johnson, Programs & Services Chair

Carleton P. Merrill, Post Audit & Oversight Chair