

CITY OF NEWTON

BOARD OF ALDERMEN

SPECIAL JOINT MEETING

PROGRAMS AND SERVICES COMMITTEE
AND POST AUDIT AND OVERSIGHT REPORT

WEDNESDAY, DECEMBER 6, 2006

Present:

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

Post-Audit: Ald. Merrill (Chair), Albright, Burg, Coletti, Harney, Fischman, and Schnipper

Absent: Mansfield

Other Alderman: Ald. Weisbuch, Samuelson, and Vance

City/Board Staff: Dan Funk (City Solicitor), Sandy Pooler (Chief Administrative Officer), and David Olson (Board Clerk)

REFERRED TO PROG&SERVICES AND 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: **PROGRAMS & SERVICES HELD 8-0**
POST AUDIT & OVERSIGHT HELD 7-0-1 (Mansfield absent)

NOTES: Alderman Johnson called the meeting to order, explained that this meeting was a planning meeting and then asked Ald. Coletti, the docketer of the item, to explain why he docketed this item.

Introduction to the Item: Ald. Coletti explained that he hoped that this inquiry would be informational and not confrontational, that the process would be positive, and that the outcome of this investigation would be that the city had appropriate procedures in place to handle elections issues. Something went wrong with the certification of these signatures and as much as he appreciates the work of the Executive Department to investigate, he found several points with the report that he was disappointed in including: the lack of the names of those who were interviewed, what the discussions were with various city officials, and the roles that various people played as the process went along. He was embarrassed that this whole situation happened. He wanted to know how each member

involved interacted and was concerned that the Election Commissioners were not the people that ultimately dealt with the distribution of this information. He reiterated that this was not going to be an investigation of the department head and the Mayor's disposition of the situation. The Board of Aldermen has to be involved because the Clerk was involved in receiving the petitions and one of the Aldermen found the problem. He noted that the players involved have cooperated to date and he did not expect that they wouldn't cooperate in the future. He is not here to assess blame, but to fix the problem.

City Solicitor's Input to the Procedure: Ald. Johnson asked Dan Funk from a legal basis what the Committees and Board could do in terms of investigation. Dan Funk responded that section 2-11 requires that the full board make the decision to conduct a full investigation. However, if the committee wants to act more informally it can do so without going to the full board to move forward.

Ald. Coletti also asked him to respond to his concern that the Law Department was serving two masters in this situation. To this, he responded by stating that this is not one of the occasions where there is a conflict for the City Solicitor or the Law Department. At the moment there is no conflict between the Board and the Mayor and thus no conflict for him.

Ald. Coletti reminded the Committees that if we want to hire our own investigator we will have to ask for funds. He did not want to get into a situation where the Board asks for money for an investigation, the Mayor refuses, and the City Solicitor agrees with the Mayor putting them in conflict.

Aldermanic Commentary:

Ald. Parker mentioned that undertaking an investigation was a difficult conversation to have. He saw that there were three realities that were involved.

1. The integrity of the elections process has been put in question and we need to address that problem.
2. The investigation by Mr. Mitnick was internally contradictory and inaccurate in a number of regards. We need to find out what took place and why the signatures were undercounted.
3. There is a way that this can be handled in a professional manner. We should ask for written questions first and if we don't get answers then, and only then, should we use the subpoena power.

Ald. Johnson stated that we need to address this in a non-confrontational manner and get to the cold hard facts, because the integrity of our election office has been called into question.

Recommendation: Ald. Johnson proposed the following:

1. Aldermen submit written questions to be answered.
2. The questions would come to the Joint Committee Chairs; Ald. Merrill and Ald. Johnson.
3. They will then work with the Committee vice-chairs, Ald. Albright and Hess-Mahan, to consolidate the questions and group them.
4. They would then be delivered by the chairs to Mr. Mitnick . They would get his written responses and based on the results of that, they would determine if anything else is needed.

Aldermanic Responses to the Recommendation:

Ald. Parker asked if the Board would be able to address some of its questions to other individuals? Ald. Johnson responded yes. Ald. Johnson stated that when the questions are gathered by the chairs, before they are submitted to individuals for answers, the joint committees certainly could look at them. If that is what the committees want to do she would have no problem with that. Ald. Parker stated that he trusted the chairs and would like to avoid additional special meetings to review the questions. Ald. Baker felt that if this item was being held in committee, and this was a public process, that the committee is where the questions need to be decided before they were sent to individuals?

Ald Samuelson asked if Mr. Mitnick had ever been invited to meet with the Board so that we could ask questions? She would prefer an opportunity to speak with Mr. Mitnick as opposed to written questions. Ald. Sangiolo stated that she would rather have Mr. Mitnick and the Commissioners here in person to have a discussion. Let's just deal with this head on. Ald. Johnson stated that when 24 Aldermen and the public can ask anything it can open things up. It would be unfair to the individuals. We need to let them know what they are going to be asked so that they can think through their answers and do the research needed to answer the questions. It would be unfair to them to do it any other way.

Ald Sangiolo asked if Mr. Mitnick was being compensated by the city to answer the questions. Ald. Johnson responded that she did not know, but the committee did have access to him

Focus of the Investigation: There was consensus among the committee members that the focus should be on process and not personnel, as evidenced by the comments of committee members:

Ald Schnipper would like the committees to decide if this is process or people oriented because that would be two very different investigations. Ald. Johnson responded that it was her sense that it was process. Ald. Schnipper stated that she would be very comfortable going forward to look at process and how we prevent

this type of mistake from occurring in the future. She was very concerned about the “he said/she said” conversations that were going on. This needs to be about process in the election office.

Ald Fischman stated that the Mayor is working on a set of procedures. He is concerned that the procedures that are developed are the best procedures possible. The Board needs to see the Mayor’s procedures in front of it to see what the corrective action is going to be. He agreed that the Board should not get into “he said/she said”.

Ald Albright stated that we should stay out of the Personnel/Human Resources aspect of this. We need to look at the process.

Ald. Lipof stated for the record that he wanted this to be about the process not the people.

Ald. Colletti wanted everyone to understand that it is not the Mayor that should be making the policies and procedures for the Election Department. It is the responsibility of the Election Commissioners, not the Mayor, not the Board of Aldermen. It is the responsibility of the Election Commissioners and no one has heard from them. When do we get them to make sure they have better oversight?

Concern for Employees

Ald Weisbuch stated that he was concerned about the staff and asked if a blanket protection action could be in place to protect the employees allowing them to feel comfortable in fixing the problem

Ald. Merrill stated that he felt that no employee of that department will be put out to dry. They will not be harmed by any inquiry we undertake. He stated that we need a process that will be accepted by the citizens of Newton and the system must be above criticism.

Ald. Coletti reminded the committees that they are not here to discuss anyone’s character or reputation. Under the City Charter, we must give people 48 hours notice so that they can be here and respond. They need to know what they are going to be asked.

Motion: Ald Johnson made a motion that the item be held in committee, all members of the board be invited and encouraged to submit questions to the committee chairs, and that these questions be consolidated and grouped by the chairs and vice-chairs, that the questions be presented to the committees before being sent out to the appropriate people. Their written responses come back and we can decide if we need to invite those people in as well. This way we can see the questions, see their responses, and everyone is on an equal footing.

Ald. Merrill made the same motion for Post Audit as Ald. Johnson did for Programs and Services.

Programs & Services Vote: 7 in favor 1 opposed (Sangiolo).

Post Audit Vote: 7 in favor 1 absent (Mansfield).

Ald Johnson stated that she would make a question template to be distributed and that Aldermen should get their questions to her, and Ald. Merrill, by the December 20th.

Both Committees then voted unanimously to hold the item.

Respectfully submitted,

Marcia Johnson, Programs & Services Chair

Carleton P. Merrill, Post Audit & Oversight Chair