

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JANUARY 3, 2001

Present: Ald. Parker (Chair) Ald. Johnson, Coletti, Tattenbaum

Absent Ald. Merrill, Sangiolo, Gentile, Baker

Other Aldermen Present: Ald. Gerst

Also Present: City Solicitor Dan Funk, Associate City Solicitors Ouida Young and Gayle Smalley, State Rep. Rachel Kaprellian, Alan Licarie, Election Commissioner.

#526-00      HIS HONOR THE MAYOR re-appointing on December 1, 2000 RUTH CONCANNON, 279 Linwood Avenue, Newtonville, to the Newton Council on Aging; term of office to expire on September 1, 2002 (Board action date: February 16, 2001)

ACTION      APPROVED 4-0

NOTE:                Ruth Concannon is currently the Chair of the Council's education committee and pointed out there are not a lot of courses available specifically for senior citizens at a discounted rate and that is one of the issues they are working on; also they have worked with West Suburban Elder Services and the Police Department on the issue of elder abuse. She said it is frustrating to work on this issue because often the abusers are the children of the seniors being abused and therefore the parents don't want to press charges against their children, so very few of these cases are actually prosecuted. Ms. Concannon reported to the Committee that for the first time ever, the Council on Aging will be meeting jointly with the Senior Center Committee on January 4, 2001 and they will hopefully work toward merging or at least cooperating more than they do currently. She has been on the commission for two terms. The item was approved unanimously 4 in favor and 0 opposed.

#6 -01      HIS HONOR THE MAYOR appointing DAVID OLSON as DIRECTOR of the JACKSON HOMESTEAD effective February 5, 2001, pursuant to Section 3-3 and 3-4 of the City Charter.

ACTION:      APPROVED 4-0

NOTE:                The Committee was joined for discussion by Chief Administrative Officer Mike Rourke and by Carol Ann Shea, Chair of the Homestead's Board of Trustees, as well as by the appointee, Mr. Olson. There was a Search Committee that had a four-month search to fill the position and they were delighted by the amount of response they had. Mr. Rourke and

Ms. Shea reported that the Committee was very impressed with this applicant.

Mr. Olson told the Committee about his relevant experience and provided the Committee with a copy of his resume (attachment #1). He has been in the museum field for fifteen years. He considers the Jackson Homestead to be a very serious museum and he is delighted to have the opportunity to serve as its Director.

Ald. Johnson asked what kind of challenges he expected to face in managing the staff of the Homestead. He said that because it was a relatively small staff, it would not be difficult to manage. Ald. Parker said that one of the challenges that the Homestead faces is raising awareness about its existence as a resource to the community and Ald. Parker asked how he planned on bringing attention to the availability of the Homestead.

Mr. Olson said that one way of doing that is to partner with other organizations within the community such as the library and also to partner with businesses to spread the word about the existence of the resources available. For example, in some communities, the local museum works with the bank so that when people get a bank statement, they get a little note on it saying have you visited the city museum recently? He also thinks it is not just important to bring people to the museum, he thinks it is important to bring the museum out to the people and the community and he would try to be a resource for the schools and he thinks that he or one of the members of the staff could hopefully be on the curriculum development team working with the schools to find out ways in which the resources of the museum could be of use to the educational staff in the City in teaching the students.

Ald. Coletti asked about the size of the staff and the budget of the Jackson Homestead relative to the museum at which he previously worked and why he was moving to a smaller facility. Mr. Olson replied that he thought the professionalism and quality of this museum were excellent and he was excited about the opportunity to come to Newton which he thought would be a nice community for his family and he wasn't concerned with size so much as with the quality which he thought was very good. Ald. Coletti moved approval and the docket item prevailed unanimously 4-0

#528-00 EXECUTIVE SECRETARY OF THE ELECTION COMMISSION requesting Board of Aldermen approval of the following:

- A. To fix the date of Tuesday, July 17, 2001 as the final day and hour for filing with the Election Commission nomination papers of candidates for office at the Preliminary City Election to be held on Tuesday, September 11, 2001, and for filing with Election Commission of all petitions or other papers for placing on the official ballot and questions which may be lawfully submitted to the voters at said election.
- B. To fix the date of Tuesday, July 3, 2001 as the deadline for submission to the Election Commission nomination papers and petitions or other papers for placing

on the official ballot any questions for purpose of certifying as voters the names or signers thereof.

- C. To fix the date of September 11, 2001 for the nomination of 1 Mayor, sixteen (16) Aldermen-at-Large, eight (8) Aldermen-by-Ward, eight (8) members of the School Committee. Polling places to be open from 7 a.m. - 8 p.m.
- D. Election to be held November 6, 2001. Polls open 7 a.m. - 8 p.m.

#529-00 EXECUTIVE SECRETARY OF ELECTION COMMISSION setting the date of Tuesday, June 5, 2001 for the election of nine (9) members to the Newton Highlands Area Council, in accordance with Board Order #287-78 and Sec. 9-7 of the City Charter. Polls will be open from 4 p.m. to 8 p.m.

ACTION: APPROVED 4-0 AS AMENDED

NOTE: The Committee was joined for this discussion of this item by Executive Secretary of the Election Commission, Alan Licarie. He filed an item requesting scheduling of the municipal election. He had suggested a date of July 3 for nomination papers being due and July 17 as a filing date, as well as September 11 for the preliminary election and November 6 for the general election. Ald. Johnson suggested that some candidates like to get nomination signatures during the Fourth of July celebration and therefore it would be appropriate to have the deadline after the fourth of July. The Committee unanimously agreed to an amendment that would amend the nomination paper deadline to be July 5 instead of July 3 and would amend the filing date to July 19 instead of July 17. Mr. Licarie also noted that the cost of conducting the election would be about \$50,000 and he also said he was hoping to have another pay increase for staff associated with the election, as was suggested last year and the Committee unanimously supported during last years budget. Ald. Johnson moved approval of the item which prevailed 4 in favor, 0 opposed.

#530-00 ADHOC COMMITTEE ON RECODIFICATION transmitting for aldermanic approval and acceptance, the re-codified ordinances text of the City of Newton 2000 Revised Ordinances.

ACTION: NAN 4-0

NOTE: This item was referred by the Full Board to the Programs and Services Committee, but the Committee had been informed by the President of the Board that it was an error that the item was referred to the Programs and Services Committee. In fact, it should have been not been filed until the special Ad Hoc Committee on Recodification had completed its work. Because the item should not have been referred to the Committee, Ald. Tattenbaum moved NAN by the Programs and Services Committee and that motion prevailed 4 in favor 0 opposed.

#469-00 ALD. GERST, ANTONELLIS, BAKER, BRYSON, BULLWINKLE, CICCONE, COLETTI, GENTILE, JOHNSON, M.LIPOF, R.LIPOF, LIPSITT, MANSFIELD, McGRATH, MERRILL, O'HALLORAN, PARKER, SALVUCCI, SAMUELSON, SANGIOLO, SCHNIPPER, YATES proposing a home rule petition requiring that referenda affecting all Newton voters must be placed before all Newton.

ACTION: APPROVED 4-0

NOTE: The Committee was joined by City Solicitor Dan Funk, Associate City Solicitor Gayle Smalley, Associate City Solicitor Ouida Young, Ald. Bob Gerst and State Representative Rachel Kaprellian.

The lead sponsor of this item, Ald. Gerst, explained that the problem had arisen in the recent election where some of his constituents in Ward 1, Precinct 1 (who are also constituents of Rep. Rachel Kaprellian being in her representative district) were not included for participation in an advisory question regarding the size of the Board of Aldermen. Many people thought that was unfair and inappropriate and were quite upset about it and he wanted to prevent such things from happening in the future.

Ald. Parker suggested that the way to avoid this sort of problem would be to have a similar signature requirement for placing questions on the municipal ballot that was consistent with the signature threshold that currently exists for the representative district ballots. At present, it only requires 200 signatures to place a question on a representative district ballot, whereas it requires upwards of 5,000 certified signatures (10% of the registered voters in the City of Newton) to place a question on our municipal ballot. Ald. Parker suggested that obviously the proponents of this issue would have preferred to place the question before the voters just of the City of Newton, but that it was prohibitively difficult to do so under current law and so that the logical solution would be simply to make it easier to place a question on a municipal ballot without the cooperation of the Board of Aldermen and Mayor (which can currently take place with only ten signatures).

Rep. Kaprellian corroborated the information that Ald. Gerst provided that many people were upset that they were excluded from the opportunity to participate.

City Solicitor Funk explained that it was not possible for the Board to get Home Rule legislation requiring that any time there were signatures gathered for a ballot question directing a state representative that if the question pertained to the City of Newton it be on the ballot citywide in Newton because Home Rule legislation can only affect the community that offers it and the representative districts in question would be partially outside of the City of Newton, so it would require an actual change to the General Laws, not just Home Rule legislation. Specifically, it would require an amendment to Sec. 19 of Chap. 53 of the state laws. On the other hand, Sec. 18 a of Chap. 53 is the provision regarding signatures for placing an advisory question on a local ballot and that specifically

includes a provision that allows a local government to request a special act just applying to their community to change the threshold for getting an advisory question on the ballot.

Committee members were supportive of the idea of lowering the threshold. The Committee settled on the number of 500 as being a reasonable threshold. There was some discussion of 400 because that is the number of signatures required to run for Mayor but members of the Committee felt that 500 would be a fair and reasonable threshold for placing an advisory question on our local ballot. Ald. Johnson suggested that the signatures should need to be distributed throughout the City and suggested that a minimum of 25 of the signatures be from each of the wards. In other words, no fewer than 25 signatures from each of the eight wards of the City would be required, as part of the 500 total required. The Committee unanimously accepted that as special legislation. The special legislation would allow an advisory question to be placed on the ballot in the City of Newton with the signatures of 500 certified signatures so long as no fewer than 25 certified signatures from each of the eight wards are included. Of course, the existing provision that allows ten signatures plus the approval of the Board of Aldermen in Mayor to place a question on the ballot would continue to be in effect so there would be two alternative methods of getting an advisory question on the local ballot.

Ald. Johnson moved approval of that petition. The motion to carry was approved 4 in favor, 0 opposed. The Chairman requested that on the Wednesday preceding the Friday packet where this would go out, that copies be given by the Law Department to the Chair of the Committee, the lead sponsor of the item, Ald. Gerst and to any other interested members of the Committee so that they could proof read to make sure it was consistent with the intent of the Committee and it would then go out in the Friday packet with any cleaning up that was necessitated based on that distribution. The item was approved 4 in favor, 0 opposed.

#468-00      ALD. GERST requesting discussion re replacing the verb “shall” wherever it appears in the City of Newton Ordinances with the verb “must” or the verb “may.”

ACTION:      NAN 4-0

NOTE:              The Committee was joined for this discussion by Ald. Gerst as well as City Solicitor Funk, Associate City Solicitor Smalley and Associate City Solicitor Young.

Ald. Gerst explained that there could be ambiguity associated with the word “shall” and while it may be legal in all cases, it may not be advisable because in some cases “shall” is directory and in some cases it references something that is mandatory and he thought it would be better to make that clear.

City Solicitor Funk said that he was confused the first time he encountered statutory interpretation that allowed one word to be used in more than one way, but he said it is standard statutory construction and, in

fact, many legislatures use one word to mean more than one thing and that certainly is the case in our ordinances, depending on context.

Ald. Johnson asked Ald. Gerst how big he thought this problem was. Ald. Gerst said it was impossible to determine how big the problem was until the ordinance book was examined, but probably people didn't think they had a big problem in Florida until their Secretary of State interpreted the provision that said she "shall" certify the vote as making it mandatory. He believes it is clear that this problem exists elsewhere and that clarification in these kinds of instances would be a good thing.

There was a great deal of discussion ranging from the practical to the philosophical of how best to clarify our ordinances. A number of Committee members expressed the view that there was a need to clarify, but simply replacing "shall" with "may" or "must" would not necessarily solve the problem of clarity in all cases, because the consequences for failure to comply would not necessarily be made clear and, in fact, in some cases "shall" simply means "will" and doesn't mean may or must.

Ald. Coletti underlined on one copy of another statute that we were looking at with respect to respect to an earlier docket item all the instances of the word "shall" or "may" and it became clear on reading it, that "shall" didn't always mean "must" or "may." For example, "The procedures established by this section *shall* be available to any city or town. . ." makes sense, but "The procedures established by the section *may* be available to any city or town. . ." (or "must be available to any city or town") wouldn't make sense. In some cases "shall" is the correct word to use and so committee members felt that clarifying the ordinances should be done on a section by section basis and that if Ald. Gerst wanted to lead or participate in an informal effort to review important ordinances for clarity, that others expressed interest in participating in that effort, but felt that there was no way to rationally do this on a blanket basis.

Ald. Tattenbaum moved no action necessary and that motion prevailed unanimously 4 in favor, 0 opposed.

# 73-00

PRESIDENT LIPSITT transmitting the request of Parks and Recreation Commission to discuss with the MWRA the possibility of developing the Sudbury Aqueduct for the benefit of Newton residents.

**ACTION:** HELD 4-0

**NOTE:**

The Committee was joined by Dr. Michael Clarke, who is an associate member of the Parks and Recreation Commission and past president of the Newton Conservators. The Committee had been under the impression that it was waiting for input from the Law Department as to who owned what parcels before resolving this issue. Dr. Clarke pointed out that, in fact, the Law Department doesn't need to do more work on this item at this point because the work has already been done, as the open space plan actually includes a copy of the ownership chart for the various parcels along the Sudbury Aqueduct. All he is seeking is authorization

from the Board to proceed in discussions with the MWRA regarding expanded use of the aqueduct.

Associate City Solicitor Smalley expressed confusion as to how the City could own parts of this aqueduct, since it is still in use as a backup waterway for the MWRA and the document that was distributed by Dr. Clarke indicates that parts of it are owned by the City. Dr. Clarke further clarified that the MWRA is interested potentially in providing access to the aqueduct in exchange for the City doing maintenance. Committee members were confused by this in that already there is access to the aqueduct as a pathway and as a linear park and there are no prohibitions on its use and in fact it is actively used by a number of Newton residents and others as a parkway for jogging and other purposes. The question asked was whether the proposal was to connect the various pieces of the aqueduct which weren't currently connected such as when the T tracks and a fence intervened. Dr. Clarke responded that that was at least one of the issues involved and some committee members expressed interest in seeing the aqueduct connected as a walkway but not seeing it developed or paved, seeing it left in its natural permeable surface state.

Ald. Coletti wanted to know who would pay for any work that was done in conjunction with improving the access to the aqueduct. Other committee members had a number of questions, as well. It became clear that no further input from the Law Department was needed at this stage, but it would be appropriate to hear from an MWRA representative before taking further action on this item. The Committee voted unanimously 4 to 0 to hold the item until the first meeting in February at which time a number of Parks and Recreation related items will be taken up and Dr. Clarke volunteered to bring his contact from the MWRA to that meeting so that they could explain what they were willing and not willing to do and what they needed from the City of Newton in regards to doing that. Committee members also expressed interest in participating in the ongoing discussions with the MWRA on what would happen with that aqueduct.

Respectfully submitted,  
Ken Parker, Chair