



Zoning & Planning Committee Agenda

City of Newton In City Council

Monday, July 18, 2016

7:00PM – Note Early Start Time
Council Chamber

Items Scheduled for Discussion:

Public Hearing Continued on the following item:

#182-16 **Citizens petition to prohibit zones changes without surrounding owner's approval**
FRED ARNSTEIN ET AL., submitting a petition, pursuant to Article 10, Section 2 of the Newton City Charter, to establish a moratorium to prohibit the change of the zoning district applicable to any land in Newton without the written approval of a majority of the owners of land within 1,000 feet of the land contained in said proposed changed zoning district. [04/28/16 @ 10:34 AM] (90 day 8/14/16)

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, *please contact Jini Fairley, at least two days in advance of the meeting: jfairley@newtonma.gov, or 617-796-1253. For Telecommunications Relay Service dial 711.*

Items Not Scheduled for Discussion at this meeting:

- #237-16** **Mayor's appointment of Peter Sargent to the Community Preservation Committee**
HIS HONOR THE MAYOR appointing Peter Sargent, 33 Avondale Road, Newton as a member of the Community Preservation Committee for a term to expire July 31, 2019.
(60 days 09/09/16) [07/01/16 @ 2:26 PM]
- #238-16** **Zoning amendment for exempt lots definition**
COUNCILOR HESS-MAHAN proposing to amend Chapter 30: Zoning Ordinance, Section 7.8.4.C by amending the definition of "exempt lots" to include lots changed in size or shape as a result of an adverse possession claim. [06/30/16 @ 4:12 PM]
- #80-13** **Updates on the zoning reform project**
THE PLANNING DEPARTMENT requesting update discussions of the zoning reform project. [02/25/13 @ 12:31 PM]
- #61-10** **Discussion relative to bringing existing accessory apartment into compliance**
ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of **Chapter 30** into compliance.
- #164-09(2)** **Request for amendments to dimensional requirements for accessory apartments**
ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan.
- #64-13** **Permitting for conversion of historic barns/carriage houses to accessory apts**
HISTORICAL COMMISSION requesting the creation of an administrative permitting process for converting historic barns and carriage houses into accessory apartments to assist in their preservation.
- #108-15** **Zoning amendment for accessory apartments supportive of seniors**
HIS HONOR THE MAYOR requesting consideration of changes to the Zoning Ordinance that would facilitate the creation of accessory apartment units, supportive of Newton's seniors. [04/24/15 @ 2:38 PM]
- #220-16** **Discussion relative to regulating Airbnb-type companies**
COUNCILORS FULLER, HESS-MAHAN, LAPPIN, COTE AND NORTON requesting a discussion with the Planning, Inspectional Services and Fire Departments regarding

appropriate regulations, permits, licensing and/or taxes for residential owners who host short-term guests through house-sharing companies such as Airbnb.[06/06/16 @ 2:19 PM]

- #170-15** **Discussion of HUD settlement relative to creating 9-12 affordable units**
ALD. HESS-MAHAN, JOHNSON, CROSSLEY AND ALBRIGHT requesting a discussion relative to the HUD Settlement with Supporters of Engine 6, the Fair Housing Center of Greater Boston and the Disability Law Center in conjunction with the Law and Planning Departments, to explain the settlement and possible implications for the Zoning Board of Appeals and the Board of Aldermen in terms of the City's obligation to identify sites and facilitate the creation of, and issue permits for, affordable housing for 9-12 chronically homeless persons in Newton. [07/06/15 @ 4:18 PM]
- #122-16** **Discussion with ISD re procedures to protect abutters during demo projects**
COUNCILORS NORTON AND AUCHINCLOSS requesting discussion with the Inspectional Services Department relative to the City's procedures to protect abutters during demolition projects and whether Newton is requiring developers to take sufficient steps. [03/25/16 @ 12:07 PM]
- #110-15** **Discussion of the Smart Growth Zoning Overlay District Act in Newton**
HIS HONOR THE MAYOR requesting discussion of The Smart Growth Zoning Overlay District Act M.G.L. Chapter 40R and its potential application in Newton. [04/24/15 @ 2:38 PM]
- #54-16** **Zoning ordinance amendment relative to Health Club use**
ACTING DIRECTOR OF PLANNING proposing amendments to the Newton Zoning Ordinance to allow the "Health Club" use in Business 1, Business 2 and Business 4 districts; and to clarify the definition of "Personal Service" as it relates to health and fitness uses. [02/09/16 @ 4:24 PM]
ITEM SPLIT INTO PART A AND PART B:
PART A – To allow Health Club use in BU1, BU2 and BU4;
PART B – To clarify the definition of Personal Services as it relates to health and fitness issues.
Approved Part A 6-0
Held Part B 6-0
- #109-15** **Zoning amendment for inclusionary housing provisions from 15% to 20%**
HIS HONOR THE MAYOR requesting consideration of changes to the inclusionary housing provisions of the Zoning Ordinance to increase the required percentage of affordable units to 20% with the additional 5% set aside for middle income households. [04/24/15 @ 2:38 PM]

- #323-14** **Zoning amendment to require front-facing front doors in residential zones**
ALD. YATES, NORTON, COTE AND SANGIOLO proposing to amend **Chapter 30** to require that the front doors of single-family homes, two-family homes and other residential structures face the street on which their lots are located. [08/25/14 @ 11:42 AM]
- #265-14** **Request to increase several time periods for demolition delays**
ALD. BLAZAR, YATES AND DANBERG requesting:
1. to amend Section 22-50 to increase the time period for determinations of historical significance to 30 days, and to increase the time period for hearings, rulings and written notice on appeals from historical significance determinations to 60 days;
 2. to amend Section 22-50 to increase the time period to hold a public hearing as to whether or not a historically significant building or structure is preferably preserved to 60 days;
 3. to amend Section 22-50 to increase the demolition delay period for buildings and structures on or eligible for listing in the National Register of Historic Places to 30 months;
 1. and to amend Section 22-50 to increase the demolition delay period for all other preferably preserved buildings or structures to 24 months. [7/07/14 @ 12:35 PM]
- #447-14** **Proposing an ordinance to require building plans with demolition applications**
ALD. SANGIOLO proposing an ordinance requiring the submission of building plans with applications for full or partial demolitions. [11/13/14 @ 2:03 PM]
- #169-15** **Zoning amendment to require new lot standards after demolition**
ALD. SANGIOLO requesting a zoning amendment which would require any residential structures in Single Residence or Multi Residence zoning districts built after the demolition of an existing structure conform to new lot standards. [07/02/15 @ 3:20 PM]
- #264-13** **Zoning amendment to develop residential districts for small lots**
ALD. YATES requesting that the Zoning Reform Group or its successor consider amending City of Newton Zoning Ordinances **Chapter 30** to develop additional residential districts reflecting the small lots in older sections of the City and map changes to bring the zones of more residential sections of the City into conformity with the existing land uses. [08/15/13 @ 12:28 PM]
- #34-16** **Zoning amendment for large house review process**
COUNCILORS SANGIOLO, KALIS AND DANBERG proposing an amendment to Chapter 30 for a large house review ordinance requiring design review and approval of by-

right single and multi-residence residential structures exceeding certain dimensional limits. [01/19/16 @ 2:35 PM]

#142-09(7)

Resolution to reconvene Floor Area Ratio working group

ALD. HESS-MAHAN AND JOHNSON proposing a Resolution to request that the Director of Planning and Development and the Commissioner of Inspectional Services reconvene a Floor Area Ratio working group to review and analyze the definition of “*Floor area, gross*” for residential structures as it is used in the definition and calculation of “*Floor area ratio*” in **Section 30-1** with respect to actual usage, and, if necessary, make recommendations for amendments thereto and in the dimensional regulations contained in **Section 30-15(u)** and *Table A* of **Section 30-15(u)**, the purpose of which is to regulate the size, density and intensity of use in the construction or renovation of, or additions to a residential structure, to more accurately reflect and be compatible with neighborhood character, and to ensure that a proposed residential structure is consistent with and not in derogation of the size, scale and design of other existing structures in the neighborhood, and is not inconsistent with the City’s Comprehensive Plan.

#238-14

Request for development of Housing Production Plan

ALD. SANGIOLO requesting the Executive Department and Planning Department work with the Board of Aldermen to develop a Housing Production Plan in accordance with 760 CMR 56.03(4) and guidelines adopted by the Department of Housing and Community Development as soon as possible. [06/09/14 @ 11:55 AM]

#22-15

Zoning amendment to allow rental voucher program re: inclusionary zoning

ALD. YATES requesting that utilization of the Massachusetts Rental Voucher Program be added as an allowable means of complying with the inclusionary zoning provision in Phase II of Zoning Reform. [01/05/15 @ 9:53 PM]

Referred to Zoning & Planning, Land Use and Finance Committees

Qualification of affordable units on Comm Ave, Pearl and Eddy Streets

#104-15

ALD. JOHNSON, LAREDO, AND GENTILE requesting a report from the Planning Department with the following information: How many of the affordable units developed at Commonwealth Avenue, Pearl Street, and Eddy Street qualify to be included on the State’s Subsidized Housing Inventory List. If a property is not currently on the list, what can be done to make it eligible. [04/09/15 @ 12:00 PM]

#107-15

Discussion of middle income housing supportive of City employees

HIS HONOR THE MAYOR requesting discussion of approaches to create middle income housing as a means of allowing City of Newton employees the opportunity to live in the community in which they work. [04/24/15 @ 2:38 PM]

- #81-13 Request for naturally affordable compact housing opportunities**
DIRECTOR OF PLANNING & DEVELOPMENT on behalf of the Newton Housing Partnership requesting consideration of naturally affordable compact housing opportunities in MR1 zones. [02/22/13 @ 1:13 PM]
- #86-15 Discussion and review of CDBG fund expenditures and citywide goals**
ALD. CROSSLEY, ALBRIGHT, HESS-MAHAN, & JOHNSON requesting a review and discussion of Community Development Block Grant expenditures and past years' accounting to assess progress in meeting citywide program goals as adopted in the consolidated plan, including creating and sustaining affordable housing, as well as facilities improvements in approved neighborhood districts. [03/30/15 @ 6:02 PM]
- #427-13 Discussion of CDBG, HOME and ESG funds and fair housing**
ALD. HESS-MAHAN requesting discussion and periodic updates of steps the City of Newton is taking to ensure that its implementation of the Consolidated Plan, Annual Action Plan and Citizen Participation Plan and use of CDBG, HOME and ESG funds comply with federal and state fair housing and anti-discrimination laws and regulations, and its duty to affirmatively further fair housing. [12/06/13 @ 9:51 AM]
- #308-12 Discussion of policies relative to CDBG fund expenditures**
ALD. HESS-MAHAN & ALBRIGHT requesting a discussion with the Mayor's office and the Planning & Development Department of policies, procedures, and criteria relating to determinations concerning expenditures of Community Development Block Grant (CDBG) funds. [10/09/12 @ 3:59 PM]
- Referred to Zoning & Planning and Finance Committees**
- #315-14 Ordinance amendment for procurement requirements for non-profits**
ALD. HESS-MAHAN, ALBRIGHT, CROSSLEY AND DANBERG proposing an amendment to Chapter 2 of the City of Newton Ordinances setting forth requirements for procurement of materials and services by non-governmental recipients of federal, state or local funds administered by the City, such as CDBG and CPA funds. In order to encourage non-profit and other private organizations to participate in affordable housing, cultural and other public-private collaborations, such procurement requirements should accommodate the needs of non-governmental recipients for flexibility given the multiple public and private sources of funds necessary for any project by not placing undue or unreasonable burdens on them.
[08/04/14 @ 5:08 PM] Finance voted NAN
- #446-14 Discussion with Commission on Disability regarding the City's ADA compliance**
ALD. SANGIOLLO requesting a discussion with the Commission on Disability regarding the status of City compliance with ADA regulations. [11/13/14 @ 2:03 PM]

- #140-14 Zoning amendment for lodging house ordinance**
ALD. CROSSLEY AND HESS-MAHAN requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to include a "lodging house" ordinance to promulgate rules requiring annual fire, safety and health inspections and licensing of buildings providing single room occupancy and/or congregate living arrangements.
[04/04/14 @ 6:29 PM]
- #429-13 Zoning amendment for Congregate Living Facility parking requirements**
ALD. HESS-MAHAN requesting repeal and/or amendment of Zoning Ordinances **Section 30-1**, Definitions, 30-8(b)(2), Special Permits in Single Family Residential Districts, and 30-10(d)(4), Number of Parking Stalls, concerning "Congregate Living Facility", as required by federal and state anti-discrimination and fair housing laws and regulations. [12/06/13 @ 9:51 AM]
- #35-16 Creation of policy to require posting of materials of boards/commissions**
COUNCILOR SANGIOLO requesting a discussion with the Planning Department relative to creating a policy to require audio recordings of all meetings of boards and commissions and posting of same to the City's website, as well as posting of all documentation that is reviewed by boards and commissions and/or by their designated City staff member. [01/19/16 @ 2:35 PM]
- #129-13 Zoning amendment for special permits for attached dwellings**
ALD. HESS-MAHAN proposing to amend and/or clarify definition and provisions for granting a special permit for "attached dwellings" in the City of Newton Zoning Ordinances, **Chapter 30-1, 30-8(b)(13) and 30-9(b)(5)**. [05/25/13 @ 5:14 PM]
- #65-13 Zoning amendment to require special permit for major topographic changes**
ALD. YATES, FISCHMAN, KALIS requesting that **Chapter 30** be amended to require a special permit for major topographic changes.]
- #139-14 Zoning amendment to clarify rules for retaining walls**
ALD. ALBRIGHT requesting to amend **Chapter 30**, City of Newton Zoning Ordinances, to clarify rules relative to retaining walls.
- #391-09 Zoning amendment to allow payments-in-lieu of parking spaces: special permits**
ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting an amendment to **§30-19** to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.
[09/09/09 @ 3:53 PM]
- #152-10 Zoning amendment to clarify parking requirements for colleges and universities**
ALD. BAKER, FULLER, SCHNIFFER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of

Newton Ordinances to clarify parking requirements applicable to colleges and universities.

- #153-11** **Zoning amendment for Retail Overlay Districts around village centers**
ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that **Chapter 30** be amended by adding a new **Sec. 30-14** creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts.
- #168-15** **Discussion of Metropolitan Area Planning Council's Wells Avenue Market Study**
THE NEWTON-NEEDHAM CHAMBER OF COMMERCE requesting a discussion of the Metropolitan Area Planning Council's 2015 Wells Avenue Market Study.
[07/06/15 @ 5:34 PM]
- #95-15** **Discussion to consider mix of uses at Wells Avenue Office Park**
ALD. CROSSLEY, JOHNSON, LEARY, HESS-MAHAN, DANBERG, ALBRIGHT AND BLAZAR requesting a discussion with the Planning Department to consider the mix of uses in the Wells Avenue Office Park, with and without a second egress to the site, pursuant to the recent MAPC study recommending a strategic introduction of retail and restaurant uses to attract and sustain healthy commercial uses, and some number of residential units sufficient to support an economically viable and vibrant mixed use environment. [04/13/15 @ 2:46 PM]
- Referred to Finance and Appropriate Committees**
- #288-15** **Submittal by the Mayor of the FY17 Capital Improvement Plan**
HIS HONOR THE MAYOR submitting the FY 2017-FY 2021 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/01/15 @ 1:53 PM]
- Referred to Zoning & Planning, Land Use and Finance Committees**
- #273-12** **Request to restructure and increase of fees for various permits**
ALD. CROSSLEY & HESS-MAHAN requesting a restructuring and increase in fees for permits charged by the Inspectional Services Department and fees charged by the Planning Department and City Clerk to assure that fees are both sufficient to fund related services provided and simple to administer. [09/10/12 @ 1:17 PM]
Finance and Land Use voted NAN
- Referred to Finance and Appropriate Committees**
- #257-12** **Review of fees in Chapter 17 and Chapter 20**
RECODIFICATION COMMITTEE recommending (1) review of the Fees, Civil Fines/Non-Criminal Disposition contained in Chapter 17 LICENSING AND PERMITS GENERALLY

and Chapter 20 CIVIL FINES/NON-CRIMINAL DISPOSITION CIVIL FINES to ensure they are in accordance with what is being charged and (2) review of the acceptance of G.L. c. 40 §22F, accepted on July 9, 2001, which allows certain municipal boards and officers to fix reasonable fees for the issuance of certain licenses, permits, or certificates. Finance voted NAN

#195-15(3) Request to acquire land at 300 Hammond Pond Parkway

ALD. ALBRIGHT, BAKER, BLAZAR, BROUSAL-GLASER, CICCONE, COTE, CROSSLEY, DANBERG, FULLER, GENTILE, HESS-MAHAN, JOHNSON, KALIS, LAPPIN, LEARY, LAREDO, LENNON, LIPOF, NORTON, RICE, SANGIOLO, SCHWARTZ, AND YATES

requesting that, in order to preserve the conservation and recreation values of the land, and to protect existing adjacent public open spaces, the Board of Aldermen vote to acquire for the City of Newton either the undeveloped portion of the land at 300 Hammond Pond Parkway or a conservation restriction on such land.

[10/23/15 @ 2:55 PM]

#404-13 Request for rezoning in Newton Centre

NATASHA STALLER et al. requesting a revision to the zoning District boundary Lines so as to transfer from Multi-Residence 1 District to a Single Residence 3 District the following properties:

Assessors' parcels SBL nos. 61-037-0004 through 61-037-0013; 61-042-0007 through 61-042-0023; 65-019-0001; 65-019-0007 through 65-019-0012; 65-019-0014 through 65-019-0022; 65-019-0009A; 65-019-0017B and 65-019-0022A. Also requesting transfer from a Single Residence 2 District to a Single Residence 3 District SBL no. 65-019-0015A.

Respectfully Submitted,

Ted Hess-Mahan, Chair

LAW DEPARTMENT MEMORANDUM

TO: Councilor Ted Hess-Mahan, Chair
Zoning and Planning Committee

CC: Members of the Zoning and Planning Committee

FROM: Ouida C.M. Young, Deputy City Solicitor

RE: Docket Item #182-16
Citizens Petition Requesting a Moratorium to Prohibit Zone Changes
without Written Approval of a Majority of Landowners within 1000 Feet

DATE: July 15, 2016

You've asked whether a group petition filed pursuant to sec. 10-2 of the City Charter can amend the Zoning Ordinance. The question is raised in the context of Docket Item #182-16, a group petition filed pursuant to sec. 10-2 of the City Charter. The group petition requests the City Council establish a moratorium to prohibit zoning district changes without the written approval of a majority of the landowners within 1000 feet of the land proposed to be re-zoned.

Short Answer and Discussion

No. As noted in the June 24, 2016 memorandum from Assistant City Solicitor Lawlor, a moratorium is a temporary zoning amendment which can only be adopted in accordance with the requirements of sec. 5 of G.L. c. 40A. With the exception of Boston, G.L. c. 40A, sec. 5 controls the procedure to be followed for the adoption and/or amendment of zoning ordinances or by-laws throughout the Commonwealth of Massachusetts. In accordance with the General Laws, sec. 7.2 of Newton's Zoning Ordinance states that all amendments to the Zoning Ordinance are to be undertaken pursuant to G.L. c. 40A, sec. 5, and further provides in sec. 7.2.B. that "any person making application to the Board of Aldermen for a change in this Chapter shall pay to the City Clerk at the time of filing such application...." a fee set out in sec. 17-3 of the City Ordinances, *i.e.*, \$350.00.

Section 5 of Chapter 40A identifies both who can file a zoning ordinance or by-law amendment and what happens when the zoning amendment petition is filed. While sec. 5 does allow, among others, 10 registered voters in a city to file a petition requesting an amendment to that city's zoning ordinance, sec. 5 requires the city council submit the requested amendment to the planning board within fourteen days of receiving the requested amendment.

Submission of the requested amendment to the planning board is a critical step in terms of amending zoning ordinances or by-laws. While both the city council and the planning board must hold public hearings, either together or separately, on the requested amendment, the city council cannot act on the requested amendment until the planning board has either submitted its recommendations to the city council, or 21 days following the close of the planning board's public hearing have elapsed.

An equally critical step in terms of adopting a zoning amendment is the requirement in sec. 5 for various notices to be published, posted, or mailed prior to the public hearing before either the city council or the planning board. These notices include a notice published in a newspaper of general circulation in the city "once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing." The notice also must be posted "in a conspicuous place in the city ... hall for a period of not less than fourteen days ..." before hearing. Finally, the notices must be mailed to the Massachusetts Department of Housing and Community Development, the regional planning agency, if there is one, and the planning boards of all abutting cities and towns.¹ The information to be included in these legal notices is also prescribed by sec. 5.

While group petitions filed pursuant to sec. 10-2 of the City Charter would satisfy the requirement that 10 voters may file a request for a zoning amendment, the Charter has no requirement that the planning board hold any public hearing on a group petition. And to the extent that there is any requirement in the Charter regarding notice of the public hearing on the group petition, it is simply that the City Clerk "mail notice of the hearing to the first 50 certified signers whose names appear on each petition at least 48 hours before the hearing." While sec. 10-2 also appears to have some requirement that there be a published notice at "public expense", the Charter is silent as to the information to be contained in the notice, or when or how the notice is to be published.

Finally, given that sec. 10-2 does not require that the City Council adopt measures proposed by group petitions by any particular vote, such measures could be adopted by a simple majority vote of those present and voting. *See*, sec. 2-6(b) and sec. 11-13. In contrast, sec. 5 of Chapter 40A requires zoning amendments be approved by a 2/3rds vote of all members of a city council (or a 3/4ths vote if there is a protest filed as to a map change amendment.)

Accordingly, for the reasons stated above, a group petition filed pursuant to sec. 10-2 of the City Charter does not satisfy the procedural requirements set out in sec. 5 of Chapter 40A for amending a zoning ordinance and cannot be used to amend the Newton Zoning Ordinance.

¹ Non-resident property owners can also pay to receive notice of all zoning amendment petitions, and notice must also be given to the Commonwealth's farmland advisory board if the zoning amendment involves agricultural or aquacultural practices.

LAW DEPARTMENT MEMORANDUM

TO: Councilor Hess-Mahan, Chair, Zoning and Planning Committee

CC: Members of the Zoning and Planning Committee

FROM: Marie M. Lawlor, Assistant City Solicitor

RE: Docket Item #182-16
Citizens Petition Requesting a Moratorium to Prohibit Zone Changes without Written Approval of a Majority of Landowners within 1000 Feet

DATE: June 24, 2016

Docket Item #182-16, a Citizens Petition filed pursuant to Section 10-2 of the City Charter, requests the City Council to establish a moratorium to prohibit zoning district changes without the written approval of a majority of the landowners within 1000 feet of the land proposed to be re-zoned. You have asked my opinion as to whether such a prohibition would be valid.

Issue

Would a zoning ordinance establishing a moratorium during which a change of the zoning district applicable to any land in Newton would be prohibited without the written approval of a majority of landowners within 1000 feet be valid?

Short Answer

No. Such a prohibition, which gives final authority over approval or disapproval of a zoning amendment to surrounding landowners, would constitute an improper delegation of zoning authority to private citizens, and would be in direct conflict with the Zoning Enabling Act, M.G.L. c. 40A as well as the due process clause of the 14th Amendment.

Discussion

The power to zone stems from the police power reserved to the Commonwealth by the Massachusetts Constitution. Under the Home Rule Amendment, the police power, including the zoning power and certain other state powers may be directly exercised by the municipalities of the Commonwealth. In Massachusetts, the zoning authority of cities and towns is regulated by G.L. c. 40A.

It is well settled law that the police power of local governments, including the power to zone, may not be delegated to private citizens. In *Washington ex. rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116 (1928) the U.S. Supreme Court invalidated a municipal zoning ordinance permitting a particular use of land only if more than one-half of the landowners within a particular distance approved. The Court stated that giving the neighboring landowners, who are unbound by any official duty, unrestricted authority to prohibit the particular use of land in question was "... repugnant to the due process clause of the 14th Amendment." 278 U.S. 166, 172. See e.g. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982) (Massachusetts statute that vested in the governing bodies of churches and schools unrestricted power to veto issuance of liquor licenses within a 500 foot zone is improper delegation of police power to private parties).

M.G.L. c. 40A provides strict procedures for municipal approval of zoning amendments, including amendments to zoning districts. Section 5 of the statute clearly states: "Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided." [Emphasis supplied]. The procedure for approval is spelled out in the section:

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the ... city council ...

Section 5 does, however, provide some relief for neighboring landowners. If, in cities such as Newton with a council of fewer than twenty-five members, "... owners of more than twenty percent of the land proposed to be included in the zoning change or of the area of the land immediately adjacent extending three hundred feet therefrom ..." file with the City Clerk a written protest with their reasons against the change prior to final action by the City Council, then the amendment may only be approved by a three-quarters vote of the City Council, rather than two-thirds. In Newton, a two-thirds vote would require sixteen votes; a three-quarters vote would require eighteen votes. The City Council, however, retains the final authority to approve or disapprove the zoning amendment.

Conclusion

To the extent that Citizen's Petition, Docket #182-16, seeks, during the period of a proposed moratorium, to delegate the final approval of a zoning amendment (in this case a change in zoning district) to a majority of landowners within a thousand feet of the land proposed to be re-zoned, it calls for an improper delegation of the City of Newton's zoning authority to private citizens. In my opinion, any ordinance proposing such a delegation, whether the delegation is contained in a temporary zoning ordinance (a moratorium) or a permanent zoning ordinance would be in direct conflict with M.G.L. c. 40A and the due process clause of the 14th Amendment.

Petition for A Moratorium on Rezoning

**Neighbors for A Better Newtonville
Presentation to the City of Newton
Zoning and Planning Committee**

June 27 2016

Why This Petition?

- Winds of development are strong
 - 76 properties listed
 - 12 in process
 - 21 parking lots
- Comprehensive Plan and Mayor's new report — clearly in favor of
 - Housing diversity
 - Careful planning process
 - Learn as you go
 - Preserve what's good
- We support these goals

Why This Petition?

But...

- Developers will come in as soon as they can
- Consequences of development can be seriously negative — should be explored first
- Mayor's report wants to place decision-making in hands of administrators.
- Slow down — stay within current zoning limits and keep the City Council as an active participant
- That's why our petition.

The Petition

The undersigned voters of the City of Newton petition the Newton City Council to adopt the following measure:

The Newton City Council shall establish a Moratorium to prohibit the change of the Zoning District applicable to any land in Newton, without the written approval of a majority of the owners of land within 1,000 feet of the land contained in said proposed changed Zoning district.

Among Topics We Will Talk About

- Jurisdiction of the Council
- Rationales for development — sometimes faulty
- Impacts of development on city and residents

The Council Does Have The Authority

Results To-Date from Orr Block Petition

Since mid-May, petitioners have gathered 1912 signatures — online and on paper — to request the City Council deny rezoning of the Orr Block parcel:

1577 Paper signers

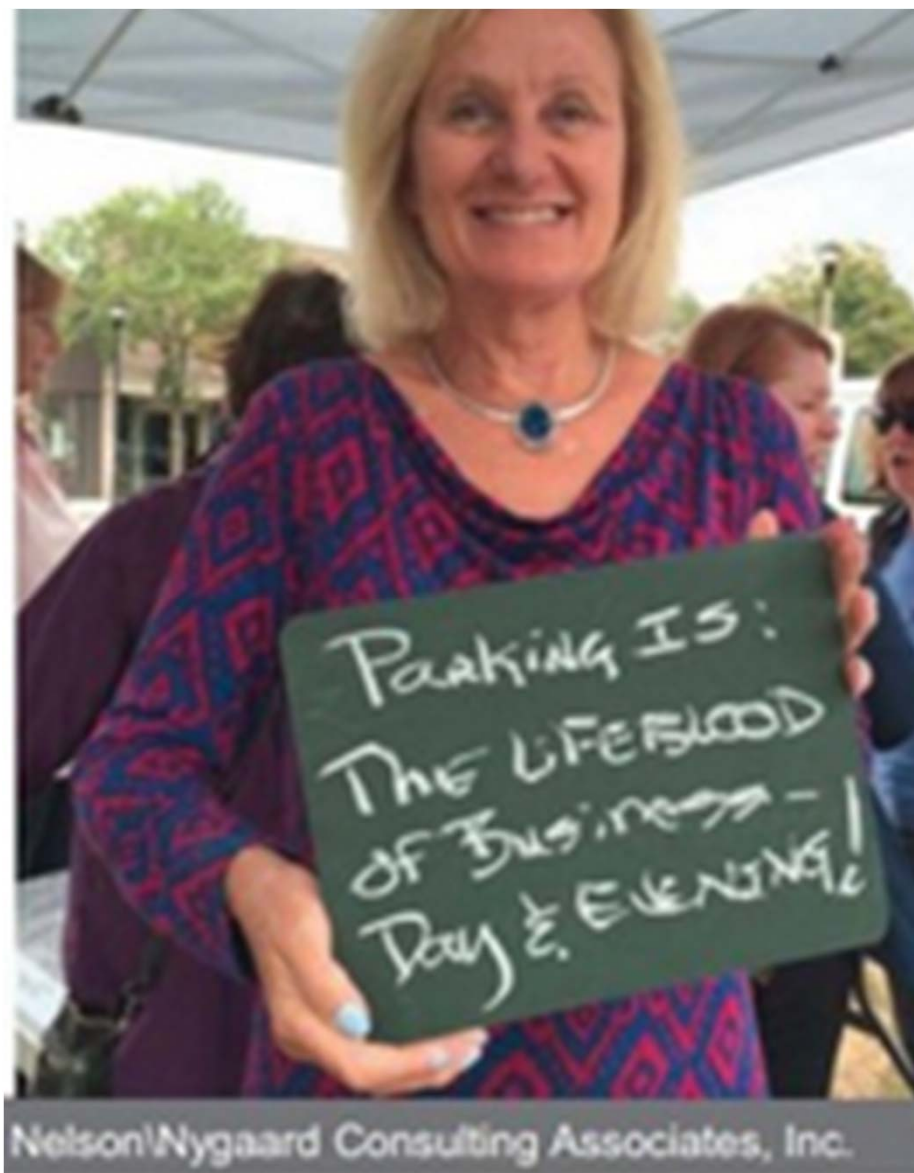
323 Online signers

See petition at
www.betternewtonville.org/petition

Important Topics for Further Discussion

- Transit Oriented Development — correct understanding
- MU4 Districts
- Village and neighborhood input of small project 40B developments
- Citizen involvement in establishing municipal goals
- Rethinking the purpose of Special Permit permission for expansion.
- Rethinking the purpose of allowing parking wavers and their impact on the village.

Parking is the Lifeblood of Business



The 85% Rule

- When 85% of spaces are taken, drivers are likely to abandon the area rather than wait for parking

Walnut Street Between Washington and Foster — Winter Scene



Around Newtonville Center

- Currently, available parking can accommodate about 45 more vehicles.
- But new construction will add 177 more vehicles.
- About four times more than current system can bear.