

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

WEDNESDAY MAY 25, 2011

8:00pm Room 202

ITEMS SCHEDULED FOR DISCUSSION:

Appointment by His Honor the Mayor

#133-11 STUART SNYDER, 30 Erie Avenue, Newton Highlands, appointed as an alternate member of the Planning and Development Board for a term of office to expire on February 1, 2014. [04/25/2011 @ 4:20PM] (60 days to expire on June 23, 2011)

Appointment by His Honor the Mayor

#134-11 EUNICE KIM, 147 Crafts Street, Newton, appointed as an alternate member of the Planning and Development Board for a term of office to expire on February 1, 2014. . [04/25/2011 @ 4:20PM] (60 days to expire on June 23, 2011)

Appointment by His Honor the Mayor:

#112-11 DAVID ABROMOWITZ, 66 Clyde Street, Newtonville, appointed to the Economic Development Commission for a term of office to expire on May 1, 2014. [04-11-11 @5:31 PM] (60 days to expire on June 19, 2011)

Appointment by His Honor the Mayor:

#113-11 BARRY ABRAMSOM, 113 Chestnut Street, West Newton, appointed to the Economic Development Commission for a term of office to expire on May 1, 2014. [04-11-11 @5:30 PM] (60 days to expire on June 19, 2011)

Public hearing assigned April 25, 2011

#17-11(2) TERRENCE P. MORRIS et. al., proposing amendments to Section 30-1 of the Zoning Ordinance which would institute a length-weighted mean approach for calculating grade plane by revising the current definition of grade plane; and by inserting a new definition of average grade containing a method for a length-weighted mean grade plane calculation. [03-30-11 @ 4:12PM]
(Public Hearing closed 4-25-2011)

Public hearing assigned for April 25, 2011

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Kathleen Cahill, 617-796-1125, via email at KCahill@newtonma.gov or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

- #65-11(2) TERRENCE P. MORRIS & JOSEPH PORTER proposing amendments to the Zoning Ordinance to revise the definition of “height” in Section 30-1 so as to calculate building height as the distance from grade plane to the peak of the roof; to revise clause (b) in the definition of “height, contextual” in Section 30-1 (relating to Section 30-15(s) Planned Multi-Use Business Developments) so as to calculate vertical distance using the peak of the roof; to increase the height limits in residential districts contained in Section 30-15, Density/Dimensional Controls, Tables 1 and 4; to increase the height limit contained in Section 30-15(m) for accessory structures; and to add a provision in Section 30-15(m) to allow accessory structure height limits to be waived by special permit. [03-30-11 @ 4:12PM]
(Public Hearing closed 4-25-2011)
- #49-11 ALD. JOHNSON, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning & Development and Commissioner of Inspectional Services review with the Zoning & Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments. [02-15-2011 @8:44AM]
- #81-11 ALDERMEN JOHNSON, CROSSLEY, HESS-MAHAN, LAPPIN & DANBERG requesting the Director of Planning & Development and the Chair of the Zoning Reform Scoping Group provide updates on the Scoping Group’s Progress. These updates will occur at the frequency determined by the Chair of the Scoping Group and the Chair of the Zoning and Planning Committee. [3/14/2011 @ 11:16PM]
- #26-11 HIS HONOR THE MAYOR submitting in accordance with Section 7-2 of the City Charter an amendment to the 2007 Newton Comprehensive Plan to include a Mixed-Use Centers Element [01-07-11 @ 4:20 PM]
REFERRED TO PLANNING AND DEVELOPMENT BOARD (to be reported back on April 1, 2011)

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #153-11 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. [05-10-11 @3:19 PM]

- #153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11@3:16 PM]
- #154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @11:34AM]
- #133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.
- #150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM].
- #154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]
- #102-11 ALD. HESS-MAHAN, JOHNSON, COMMISSIONER LOJEK, AND CANDACE HAVENS requesting an amendment to Chapter 17 to establish a fee for filing a notice of condo conversion. [03-29-11 @ 4:55PM]
- #94-11 ALD. HESS-MAHAN proposing an amendment to the accessory apartment ordinance by adding “no accessory dwelling unit shall be separated by ownership from the principal dwelling unit or structure, including, without limitation, conversion to the condominium form of ownership. Any lot containing an accessory dwelling unit shall be subject to a recorded restriction that restricts the lot owner’s ability to convey interest in the accessory dwelling unit, except leasehold estates” [03-24-11 @ 9:30AM]
- #95-11 ALD. HESS-MAHAN proposing an ordinance requiring that a notice of conversion to condominium ownership be filed with the Inspectional Services Department and that the property be inspected to determine compliance with all applicable provisions of the state and local codes, ordinances and the rules and regulations of all appropriate regulatory agencies. [03-24-11 @ 9:30AM]

REFERRED TO ZONING AND PLANNING AND FINANCE COMMITTEES

- #64-11 HIS HONOR THE MAYOR, in coordination with the Director of Planning and Development, requesting to amend Section 30-15, Table 4, Dimensional Controls for Rear Lot Development in Residential Zones as they pertain to floor area ratio. [02-22-11 @ 6:47PM]
- #365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.
- #253-10(2) ZONING & PLANNING COMMITTEE supporting the establishment of a Brightfield Solar Energy Array, subject to neighborhood input, on the Flowed Meadow site similar to the one in Brockton. [02-15-2011 @10:01am]
- #150-09(3) ALD. ALBRIGHT, JOHNSON, LINSKY proposing that a parcel of land located in Newtonville identified as Section 24, Block 9, Lot 15, containing approximately 74,536 square feet of land, known as the Austin Street Municipal Parking Lot, currently zoned Public Use, be rezoned to Business 4. (12/10/10 @9:21AM)
- #153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]
- #183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the first floor, provided that the first floor is used for an office or research and development use as described above;” and renumbering existing subsection (5) as (6). [06/07/10 @12:00 PM]
- #311-10 HIS HONOR THE MAYOR submitting the FY’12-FY’16 Capital Improvement Program, totaling \$174,246,135 pursuant to section 5-3 of the Newton City Charter and the FY’11 Supplemental Capital budget which require Board of Aldermen approval to finance new capital projects over the next several years. [10/18/10 @5:24PM]
- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]
- #152-10 ALD. BAKER, FULLER, SCHNIPPER, 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. [06/01/10 @ 4:19 PM]

#411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.

#391-09 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.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

#207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]

#61-10 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. [02/23/10 @ 2:48 PM]

#164-09(2) 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. [01/07/10 @ 12:00 PM]

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

#48-06 ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent

accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

- #60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen.
[02/23/10 @ 3:24 PM]
- #475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development.
[12/09/08 @ 9:41 AM]
- #288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2 , 3 and 4 districts.
- #440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.
- #20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.

Respectfully Submitted,

Marcia Johnson, Chairman

Professional Experience

Law Office of Stuart L. Snyder, P.C., Wellesley and Danvers, MA 1996 to present

- Thousands of residential and commercial real estate transactions: buyer/seller representation; preparation/review of offers and purchase and sale agreements; compliance with time-sensitive pre-closing and post-closing lender documentation requirements and correspondent instructions (purchases and refinances); review of title reports; identification/resolution of title clouds and defects; examination of surveys/mortgage inspections; preparation of zoning opinions; negotiation with title insurance companies regarding risk and coverage – drafting affirmative policy language and exceptions to coverage; 1031 exchanges.
- Title insurance issuing agent for Old Republic National Title Insurance Company. Also have been agent for Lawyers Title Insurance Company, Ticor Title Insurance Company and First America Title Insurance Company.
- Residential landlord/tenant matters: preparation/review of residential and commercial leases; advice regarding landlord/tenant rights/responsibilities; dozens of residential Summary Process cases, including trials in District Court and Housing Court
- Chapter 93A consumer protections claims
- Managed two offices, including as many as four paralegals/support staff.

Law Office of Goldman & Goldman, Swampscott, MA 1991 to 1996

- Civil Litigation: responsible for client representation in lawsuits arising from all areas of firm's general practice, including: banking matters; condominium fee collections; landlord/tenant matters; claims against estates; individual and corporate matters. Tried and won first Superior Court jury trial.
- Real Estate: represented individual clients and lenders in closings for residential and commercial transactions. Conducted foreclosures.

Law Office of Englander & Sooho, Newton, MA 1990 to 1991

- As sole associate of two partners, involved at all levels in litigation of diverse matters stemming from general practice focused on civil litigation, domestic relations and real estate. Appeared in court for trials, pre-trial conferences, and motions. Met with clients, negotiated with opposing counsel, conducted legal research, attended depositions, and drafted litigation related documents.

- Completed forty hours of mediation training in accordance with M.G.L. ch. 233, § 23C with Mediation Works, Incorporated, Boston, MA in March, 2008.

Bar Membership

U.S. District Court for the District of Massachusetts, 1991
Commonwealth of Massachusetts, 1990

Education

Suffolk University Law School, Boston, MA
J.D., 1990

Honors: ATLA National Trial Team, Regional Semi-Finalist
Third Year Mock Trial Competition, Semi-Finalist
First Year Moot Court Competition, Best Oral Advocate

Skidmore College, Saratoga Springs, NY
B.A., English/Philosophy, 1986

Honors: Dean's List

Activities: Social Integrity Board, Appointed Chairperson
Academic Integrity Board, Elected Member

Volunteer Work

Newton Girls Soccer, Coach/Grade Coordinator

West End House Girls Camp, Inc., Board of Directors

Congregation Dorshei Tzedek, Former member of Board of Directors/Formal Chair of Space Committee

Eunice L. Kim

EDUCATION

Tufts University

Master of Arts – Urban and Environmental Policy and Planning

Areas of Study: Housing, Transportation, Land Use and Economic Development

- Awarded an Outstanding Planning Award from the Massachusetts Chapter of the American Planning Association for a team project creating a conceptual plan for a multi-use path in Watertown, MA
- Conducted a feasibility analysis for a Business Improvement District in Watertown, MA
- Developed a feasibility study for bicycle lanes on Washington Street in Newton, MA
- Performed case studies on affordable housing trusts and inclusionary zoning ordinances

Boston University, College of Communications

Bachelor of Science – Journalism

Concentration: Magazine Journalism, Minors: Sociology, Women Studies

- Summa Cum Laude, Dean's List

25 FEB 21
 11MA:PR:159
 May 2002

Boston, MA

Jan. 2002

EXPERIENCE

Transit Cooperative Research Program study

Research consultant

Somerville, MA
 October 2010 – present

- Conducting a literature review on the integration of ridesharing and transit for a synthesis study to be published by the Transportation Research Board
- Helping develop a survey to solicit data from transit agencies, Metropolitan Planning Organizations and Councils of Governments

VHB

Planning Intern

Watertown, MA
 May 2010 – present

- Drafted the Housing, Public Facilities, Natural Resources and Energy/Sustainability chapters of the Sturbridge Master Plan
- Crafted a proposed Open Space Residential Development zoning ordinance for Barrington, RI
- Helped revise zoning ordinances to promote the creation of senior housing and accessory units
- Authored memos and produced presentations synthesizing the results of public outreach projects, including the Green Line Extension land use workshops

Watertown Department of Community Development and Planning

Planning Intern

Watertown, MA
 May – August 2010

- Authored amendments to Watertown's zoning ordinance to meet the requirements of the state's Green Communities program
- Updated the Town of Watertown's site plan review process and criteria
- Developed bylaws for the Watertown Housing Partnership
- Reviewed the application for a horticulture center at Mount Auburn Cemetery and wrote a staff report recommending its approval

LDS Consulting Group, LLC

Research Associate

Newton, MA
 Sept. 2008 – March 2010

- Led the production of an affordable housing study for Wellesley and surrounding communities
- Conducted market studies for affordable and mixed-income housing projects in Massachusetts
- Created housing inventories by interviewing housing managers, planners and local officials
- Performed business development activities such as writing proposals
- Produced a quarterly online newsletter
- Co-authored articles that were published in the *Tax Credit Advisor* and *New England Planning*

Statesman Journal

Salem, OR

Reporter

Oct. 2006 – Aug. 2008

- Wrote news stories about development, land use, transportation projects, neighborhood issues, the Salem-Keizer Transit District, public health, higher education and the Oregon legislature
- Launched a six-month enterprise project that focused on issues facing youth in the region
- Posted stories online and took photos for online and print editions

Patriot Ledger

Quincy, MA

Town Reporter

May 2005 – Sept. 2006

- Investigated leads and wrote stories about town government, development, education, public health, business and crime
- Developed features about local people, places and events

Gatehouse Media (formerly Community Newspaper Company)

Greater Boston, MA

Reporter for the **Milford Daily News**

Feb. 2004 – May 2005

- Covered the paper's largest town, focusing on development and local government
- Developed regional stories for Sunday editions and covered breaking news

Assistant Editor for the **West Roxbury and Roslindale Transcript**

Aug. 2003 – Feb. 2004

- Wrote stories about Boston schools, development, politics and neighborhood groups
- Edited stories and designed page layouts

Reporter for the **Watertown Tab and Press**

Aug. 2002 – Aug. 2003

- Produced in-depth stories about town government, education, development and neighborhood issues as the newspaper's only reporter
- Won a regional award for a story on the housing affordability problem in Watertown, MA

Boston Herald

Boston, MA

Editorial Assistant

Feb. 2002 – Aug. 2002

- Wrote news stories, features and obituaries

ACTIVITIES**Bike Newton**

Newton, MA

Oversight Committee member

July 2009 – present

- Serve as a liaison to LivableStreets Alliance, a nonprofit advocacy group serving Metro Boston
- Helped plan and facilitate Bike Newton's 2010 community meeting

Newton Housing Partnership affordable housing subcommittee

Newton, MA

Volunteer member

Oct. 2009 – March 2010

- Assisted the City of Newton's Housing staff develop a strategy for creating an affordable housing trust by providing research on best practices

Newton Housing Action Plan Initiative

Newton, MA

Member

Sept. 2008 – Dec. 2009

- Analyzed the potential impact of redeveloping a parking lot into a mixed-use project
- Interviewed housing developers to identify challenges in the City of Newton's permitting process

COMPUTER SKILLS

- Microsoft Office (Word, Excel, PowerPoint, MapPoint), ArcGIS, Adobe InDesign, STATA and Photoshop

INTERESTS & AFFILIATIONS

- Quincy Symphony Orchestra – violinist and Board of Directors member
- Citizens' Housing and Planning Association – member
- National Council of Affordable Housing Market Analysts – member
- Urban Land Institute – Young Leaders member
- Asian American Journalists Association – past member



David Abromowitz

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NEWTON, MA 02459

Practices/Industries

Real Estate

Green Business

Public Law and Policy

Affordable Housing &
Economic Development

Real Estate Finance

Tax Credits

Medical, Educational and
Cultural Institutions

Education

Harvard Law School, J.D.,
1982, *magna cum laude*

Princeton University, B.A.,
1978, *magna cum laude*

Admissions

Massachusetts

Overview

David Abromowitz, a Director and Co-Chair of the firm's Real Estate group, conducts a broad national practice leading complex development and financing transactions, representing for-profit, non-profit and governmental organizations. Growing clients frequently turn to David for advice in all aspects of their operation and strategic planning. He is nationally known for particular expertise in many areas of affordable housing and economic development, including Section 42 multifamily residential properties, active adult and assisted living communities, revitalized public housing and HOPE VI matters, Section 236 and Section 8 financings, community land trusts, and other multi-layered public and private financings.

Representative Experience

- Sale for national REIT of 14 property, 1,200 unit apartment portfolio involving numerous subsidy, regulatory and structuring issues
- \$160 Million securitized refinancing of 1,283 unit apartment complex involving subordination of three public loans and ground lease negotiations to meet rating agency requirements.
- Counsel to John Hancock Financial Services on the sale of the Hancock Tower and related buildings to Beacon Capital Partners as well as on the subsequent repurchase of the Brown and Berkeley Buildings from Broadway Partners.
- \$700 Million Boston Convention and Exposition Center project for the Boston Redevelopment Authority, including land assembly, relocation and multi-party development arrangements.
- Master-planned development of 3,000 acre former Digital Equipment Corporation campus into 2,500 home planned unit development (including multiple hotel/conference centers, and Rees Jones and Jack Nicklaus designed golf course) for Pinehills LLC.

- Tax credit equity investments for various national syndicators, including numerous tax credit partnerships throughout the Southeast, Mid-West and Mid-Atlantic, and multi-property fund of 14 properties in 7 states.
- Multiple acquisition/rehab resyndications for non-profit sponsors of Section 8, Section 236 and other older assisted projects using both housing and historic tax credits.
- Portfolio transaction for Section 236 and Section 8 owner involving all aspects of over 3,000 units of HUD-assisted housing.
- Over \$400 Million of bridge and fund financings representing one of the premier national low income housing tax credit syndicators.

Professional and Community Involvement

- Board of Directors, MassDevelopment
- Senior Fellow, Center for American Progress
- Secretary, National Housing & Rehabilitation Association
- Board, Equity Trust (1996-present)
- Board, National Housing and Rehabilitation Association (1997-present)
- Co-Chair, Governor Deval Patrick's Housing Transition Working Group (2006-2007)
- Co-Chair and founding member, Lawyers Clearinghouse on Affordable Housing and Homelessness (Co-Chair, 1993-1998) Board, YouthBuild USA (1998-present) Chair, ABA Forum on Affordable Housing and Community Development (1996-1997) and Board Member (1987-1998)
- American Bar Association Forum on Affordable Housing and Community Development
- Past President, Congregation Eitz Chayin
- Former Chair, Goulston & Storrs Pro Bono Committee (overseeing Firm's award-winning pro bono program) (1997 - 2007)

Awards and Recognition

- Martindale Hubbell Peer Review Rated AV Preeminent™
- Massachusetts Super Lawyer, 2009-2011

- Honored by National Economic Development and Law Center, 2004

Speaking Engagements

- Keynote Speaker, National Community Land Trust Conference, Albuquerque, New Mexico, 2010
- Featured Speaker, Neighborworks America National Conference, Atlanta, Georgia, 2009
- Panelist, "Green Initiatives in Affordable Housing," Boston Bar Association, 2009
- Presenter, "Public Service Opportunities in the Private Sector", Harvard Law School, 2003
- Presenter, National Association of Black Realtors, "Making Affordable Assisted Living a Reality", Louisville, KY, 2000
- Presenter, Real Estate Finance Association forum, 1999

Advisories

- State Tax Credit Encourages Expansion of Market Rate Housing Stock , January 2011
- Affordable Housing Preservation Law Imposes New Notice Requirements, Right of First Refusal and Right of First Offer, February 2010
- PACE Bond Financing for Energy Projects Gaining Favor, Adopted in New York, January 2010
- Broad Housing Tax Credit Consensus Reached, August 2009
- HUD Issues Notice of Funding Availability for Energy and Green Retrofits to Section 202, Section 811 and Section 8 Housing, May 2009
- New Energy Efficiency Coordination Between HUD and DOE, May 2009
- FY 2009 Appropriations Mixed Bag for Housing Programs, FY 2010 Looking Brighter, March 2009
- Neighborhood Stabilization Program Update, March 2009
- Affordable Housing and Economic Development Notes, February 2009
- The Housing and Economic Recovery Act of 2008, July 2008
- Deepening Credit Crisis - Legal Developments, March 2008

- Environmental Due Diligence: Important Changes on the Horizon, March 2004

Publications / Mentions

- "Local Commercial Real Estate Could Get e-Investors," Banker & Tradesman, March 2011
- "A Responsible Market for Rental Housing Finance ," Center for American Progress, October 2010
- "Making the Community Reinvestment Act More Effective," Center for American Progress, July 2010
- "Homeownership Done Right," Center for American Progress, April, 2010
- "Crossing the Finish Line: Exchange Funds Push Massachusetts Deal Forward", Tax Credit Adviser, March 2010
- The Next Housing Crisis, February 2010
- "A Path to Homeownership," Center for American Progress, February 2010
- "Groups Agree to LIHTC Stimulus Plan", September 2009
- "Striving For Green Affordable Housing," GlobeSt.com, January 2009
- "Addressing Foreclosures: A Great American Dream Neighborhood Stabilization Plan," Center for American Progress, February 2008
- "A Foreclosure-Free Option," Boston Globe, January 2008

113-11

ABRAMSON & ASSOCIATES, Inc.

Real Estate Advisory Services

QUALIFICATIONS

Barry M. Abramson

Barry Abramson has over 30 years of experience in the areas of real estate advisory, development, disposition, acquisition, urban redevelopment and economic development.

This experience has entailed strategy formulation, market and feasibility analysis, valuation, impact analysis, and development, marketing and transaction implementation for a broad range of complex projects across the country and abroad on behalf of property owners, investors, developers, financial institutions, public agencies and nonprofit institutions.

Prior to establishing Abramson & Associates, Inc., Mr. Abramson was Senior Vice President of Leggat McCall Advisors, the advisory arm of a major regional full service brokerage company, and its successor firm, Bonz & Company.

Mr. Abramson's advisory experience also includes his tenure as Director of Real Estate Advisory Services for the New England Region for Laventhol & Horwath, a national consulting and accounting firm, as well as work throughout the country while based in other of that firm's offices.

Development and acquisition experience includes his work for the F. D. Rich Company of Boston, a major regional developer, for whom he managed pre-construction for a \$130 million mixed-use waterfront development and evaluated other developmental acquisitions.

For the Boston Redevelopment Authority, Mr. Abramson project managed creation of a comprehensive market analysis and development strategy for the City's commercial core, Downtown Crossing, culminating in a billion dollar program of development, and participated in the strategy's implementation through coordination with the development community and structuring of project public financing.

Mr. Abramson also worked with numerous public and business development organizations in New York City, including the Brooklyn Chamber of Commerce, the New York City Public Development Corporation, the Nassau Street Mall Improvement Association, and the US Army Corps of Engineers, on projects entailing commercial revitalization, economic development and planning.

Mr. Abramson holds a Master of Science in City Planning from Pratt Institute, and a Bachelor of Arts from Queens College of the City University of New York.

Mr. Abramson is a member of the Urban Land Institute and the Citizen's Housing and Planning Association.

11 JUN 11 P 5:30
CITY CLERK
NEW YORK, N.Y. 10013

ABRAMSON & ASSOCIATES, Inc.

Real Estate Advisory Services

**SERVICES
&
QUALIFICATIONS**

11 APR 11 P 5:31
CITY CLERK
NEWTON, MA 02459

FIRM PROFILE AND SERVICES

Abramson & Associates, Inc. offers a full spectrum of real estate advisory services to assist clients from concept through realization of complex projects. The approach to these services integrates incisive evaluation, creative strategic problem solving and a real world, results orientation to implementation.

A particular strength and focus of the firm's activities is providing assistance for projects that are challenging in terms of complex or unique property types and/or project situations.

Abramson & Associates, Inc. offers these services in a format highly responsive to client needs. Clients get the attention and expertise of the firm's president, Barry Abramson, who provides hands-on assistance through implementation. His efforts are supplemented by the services of skilled associated professionals to the extent, and only to the extent, that these contribute specialized expertise or enhance cost-effective service. Services include:

- **Strategic Planning for Real Estate Development and Transactions:** Abramson provides creative strategic input relative to programming, marketing, financial structuring and development implementation, based on a sound understanding of the financial and other implications of alternate courses of action and the opportunities they present.
- **Market, Feasibility and Highest & Best Use Analyses and Strategies:** With extensive experience in analysis and valuation for a broad range of standard and specialized real estate properties, Abramson can: evaluate market and financial feasibility, implications for value, impacts and cost-benefit analysis; target market opportunities; and strategize programming and pricing for both existing and developmental/value enhancement properties.
- **Disposition/RFP Processes:** Abramson has extensive experience assisting clients in property dispositions for developmental properties, particularly in situations in which clients seek targeted use and/or ongoing control, necessitating complex transactions such as participating land leases, staged sales and development agreements. Assistance spans marketing (formulation of optimum process and solicitation packaging), proposal evaluation, transaction structuring/negotiation and, as needed, coordination of overall process.
- **Public-Private Ventures and Financing:** Abramson offers a creative, experience-based approach to evaluating, obtaining and structuring the public assistance tools that would be most appropriate for specific projects and understanding their financial, fiscal and other implications.
- **Urban Redevelopment/Economic Development and Nonprofit Real Estate Development:** Abramson provides strategies and implementations integrating an understanding of real estate value, marketing, financing, transaction structuring and the development process with a sensitivity to the planning, policy and organizational considerations that shape decision-making processes of public and non-profit entities.
- **Development Management:** Abramson offers a hands-on management service, including team-building, and evaluation, strategy, exploration, packaging and coordination for financing, marketing, design/construction, public approvals and community coordination.
- **Acquisition Due Diligence and Implementation:** Abramson can assist clients in evaluating acquisition opportunities, coordinating other elements of the acquisition due diligence process and negotiating transactions.

26-11



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
Planning and Development Board
1000 Commonwealth Avenue Newton, Massachusetts 02459

11 APR -5 P 1:27

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Candace Havens
Director

April 4, 2011

Marcia Johnson, Chairman of Zoning and Planning Subcommittee
and Members of the Board of Aldermen
1000 Commonwealth Avenue
Newton, MA 02459

Dear Chairman Johnson:

The following is the recommendation of the Planning and Development Board regarding the Draft Mixed Use Centers Element, dated October 2010, as prepared by the Mayor's Mixed Use Task Force. The recommendation and attached report are based on the Planning and Development Board's review and discussion of the document at board meetings held on March 7, 2011, March 17, 2011, and April 4, 2011, along with feedback received through a public event held by the P & D Board on February 24, 2011 and at a follow-up public meeting convened by the Board on March 17, 2011.

Present at the meeting of March 17, 2011 were: Tabetha McCartney (Chairman), Joyce Moss (Vice-Chairman), David Banash, Leslie Burg, and Howard Haywood, at which time the Board voted to make the following recommendation on:

DOCKET# 26-11 "HIS HONOR THE MAYOR submitting in accordance with Section 7-2 of the Newton City Charter, an amendment to the 2007 Newton Comprehensive Plan to include a Mixed-Use Centers Element, dated October 2010.

VOTED: 5-0-0 (motion by Leslie Burg second by Howard Haywood) to recommend overwhelming approval of the intentions identified the October 2010 Draft Mixed Use Centers Element with particular attention to the key points observed by the Planning and Development Board and those identified as priority issues for the participants at the Board's February 24, 2011 public meeting and March 17, 2011 public meeting as identified in the attached summary, and to endorse not only the Element, but also the implementation steps referred to in the Element, specifically:

1. A commitment to review and consider revising the existing PMBD zoning as suggested in the document "Illustrative Performance Based PMBD" of October, 2011

2. A commitment to develop modeling and procedures to facilitate early collaborative City/Developer/Community efforts to create objective projections of the likely impacts of large scale development upon the vicinity and the City at large, as broadly described in the document "Collaborative Impact Assessments" of October, 2010.

Sincerely,

Joyce Moss
KME

Joyce Moss

Vice-Chair of the Planning and Development Board



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
Planning and Development Board

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Candace Havens
Director

REPORT ON THE MIXED-USE ELEMENT TO THE ZONING AND PLANNING COMMITTEE

INTRODUCTION and CONTEXT

Before the Board of Aldermen (BOA) begins its public process of reviewing and voting on the proposed amendment to the Comprehensive Plan, known as the Mixed-Use Centers Element¹ (the Element), the Planning & Development Board (P & D Board) is submitting its recommendation, as specified under Sec. 7-2 Comprehensive Plan, (b) Adoption of the Newton City Charter, and this report, as referenced therein and as follows.

As it had done with the original comprehensive plan, the P & D Board elected to hold a public workshop on the proposed amendment (February 24, 2011), in order to receive public feedback. Because the workshop format and allotment of time at the February event did not allow all who wished to speak an opportunity to do so, the Board chose to follow up with an additional public meeting (March 17, 2011), where once again, public comment was invited.

DESCRIPTION OF THE ELEMENT and BASIS FOR RECOMMENDATION

The Element consists of three parts: (1) a vision; (2) a strategy, the chief objective of which is to create an approach that makes integrated mixed use centers the preferred development choice for large areas; and (3) a set of intentions in each of four areas-design, transportation and access, housing, and finance- that are key considerations in the development of large scale mixed-use centers.

The vision emphasizes the benefits of mixed-use centers to the livability of the City, but only if they are well-designed programmatically, physically, and contextually, and only if the interests of the neighboring vicinities get careful consideration in insuring such good design. The intentions, which constitute the major portion of the Element, elaborate the vision and are framed in terms of a mission statement and associated principles, the goals of which are to provide clarity about the outcomes the City desires for its mixed-use centers and specific performance guidance that demonstrates how such outcomes are best achieved. In formulating the intentions, the Element says the objective is "not to be overly prescriptive but to use principles that work to make good and livable and vital places." Both the vision and the intentions are put forth within the context of a strategy for establishing a decision-making structure that is responsive to what the City seeks and that emphasizes clarity and predictability- for developers about prospects and timing; and for neighbors

¹ The Mixed-Use Centers Element was prepared by the Mayor's Mixed Use Task Force (MMUTF) under the chairmanship of Philip B. Herr, who was also chairman of the Comprehensive Plan Committee and the preceding Framework Plan Committee

and other stakeholders about the limits of impacts and the role they can expect to play with respect to shaping the development.

Passage of the Element is seen as Step One of a strategy necessary to create a solid and successful approach to large scale mixed-use development. The other steps involve building on the existing PMBD by adopting zoning revisions to it, as suggested in the Illustrative Performance PMBD document of October 8, 2010 and structuring a preliminary review process called *collaborative evaluation*, as outlined in the Collaborative Impacts Assessment document of October 8, 2010²

Because the three-pronged strategy is essential to success, the P & D Board elected to devote a portion of its workshop to exploring the concept of *collaborative evaluation*, and in its recommendation not only endorses the Element, but also asks for a commitment from the BOA to follow up with (1) a consideration of the suggested revisions to existing PMBD zoning; and (2) work on a preliminary collaborative review process that would, in its design, be of benefit to both neighborhood interests and developer interests while being steered by the City's technical departments.

OBSERVATIONS ON THE P & D WORKSHOP of FEBRUARY 24, 2011

Following the presentation on the Element, attendees divided into four topic-centered groups to discuss and offer ideas about the concept of a collaborative evaluation of a proposal's impacts in terms of its design, transportation and access, housing and financial costs and benefits. Upon reconvening, each group presented its four most important thoughts. Before leaving, participants voted with 4 red dots on the ideas they believed were most important of all (see Appendix A for final votes and transcript of the Mixed-Use Development Collaborative Process Workshop). The two ideas awarded the highest points were very much in accord with those presented in the Element itself: (1) That the process be "truly collaborative, with a commitment among City, developer, and community/neighbors to make it work; and (2) that interests be balanced to assure that the project both gets done and meets community goals. Additionally, there was strong support expressed for the creation of a citywide impact assessment committee, whose most important role would be to identify the needs of the population; and also strong support for the idea that the collaborative process be proactive, flexible, predictable, transparent, and take place as early as possible.

OBSERVATIONS ON THE PUBLIC MEETING of MARCH 17, 2011

By design, the Element is *not* site specific. However, the Riverside Station Neighborhood Coalition (RSNC) has been particularly concerned about large scale mixed-use centers because of the high prospects for such a project in this part of Newton. The Coalition's letter and the response to it by MMUTF Chairman Phil Herr are attached in Appendix B: Concerns and Response. While Mr. Herr's response is sufficiently comprehensive, the concern that there is a bias in the Element towards mitigation, as expressed in both the RSNC's and another neighbor's letter, merits our comment here: (1) As Alderman Hess-Mahan rightly suggested, mitigation is inherent in the special permit process, affording the Special Permit Granting Authority the ability to minimize negative impacts of a project on the neighborhood, city and region. It is what the permitting authority *does*. (2) The performance rules elaborated in the development guidance principles are, to the extent possible, designed to minimize the need for mitigation after the fact. Understanding that additional traffic is a major concern in any new development, the Element provides the following red flag threshold in its transportation guidance:

² These documents were also prepared by the Mayor's Mixed Use Task Force.

■ When the traffic increase on *any street* creates the need for street alterations and threatens community quality of life, we should re-examine the project in terms of :

- programming;
- transportation demand management;
- design of the street alterations;
- scale of development.

And (3), the transportation *mission* specifically states:

- The means of achieving mitigation should not do damage to the local environment or community values.

OTHER CONCERNS and COMMENTS

The question of "ideal" mixed-use development was raised in several contexts. Is it proactive and clarifying to elaborate it in the Comprehensive Plan, or does it tie the City's hands when circumstances or size point to less than ideal outcomes? With respect to size, Mr. Herr said that the Mayor's charge to the Mixed-Use Task Force was directed to the development of *large* mixed-use centers. It is understood that not all sites will be of sufficient size to accommodate housing *and* retail *and* office *and* destination amenities. The redevelopment at Austin Street presents a case in point. Mr. Herr stated that a "cousin document" to this element might be useful for smaller sites like Austin Street. It is also understood, and stated explicitly in the Element, that the markets for different real estate sectors seldom operate in tandem, making it difficult for developers to propose all of them in the same project and still be able to propose a rational schedule for completion. We note that the Element's housing mission implores City officials to "manage the development and phasing of housing to counter inherent volatility in separate sectors of real estate markets" and makes clear that although it is not easy to do, we should work to find a solution to the problem. Some project outcomes will not be perfect, but we will at least know what it is that the City prefers and, as stated by Alderman Danberg, that will provide leverage in negotiations with developers.

The issue of site identification was raised. Mr. Herr responded that the Task Force was not set up to work with specific sites. It should be noted, too, that even if there were a future move to undertake such identification, the act of parcel assembling when market conditions are ripe can happen so quickly that it might well thwart attempts to make such identification comprehensive or even relevant.

Whether eventual site identification is desirable or not, we heard agreement that a next step is to work on the zoning. The P & D board accepts the MMUTF's recommendation that the existing PMBD provides a sound basis for that work and thinks that "tweaking" (along the lines suggested in the companion document Illustrative Performance PMBD) rather than overhauling and starting anew is the preferred course of action.

Finally, it is important to understand the place collaborative evaluation would occupy in the proposed decision-making structure. Collaborative evaluation is a review process in which three groups- City staff, the developer's team, and community citizens- together establish a shared understanding of the impacts of a mixed-use development proposal. Why is it attractive and why is it important?

- It takes place early.
- It makes advantageous use of local residents' detailed knowledge of a site and its environs.

- It is used at the option of the developer and provides greater flexibility than exists under PMBD in meeting the City's *dimensional* objectives.
- It gives all parties the ability to shape the proposal before the developers' full resources are committed.
- It institutionalizes a three-pronged paradigm of trust among the developer, City staff, and the community.
- It provides for a level of predictability and clarity about the proposed development in the subsequent permitting proceedings.

The collaborative evaluation process is not intended to be a tri-partite "meet and greet." To succeed, it must be well-structured and provide a well-informed voice representing the City and other interests, including neighbors and affected business interests.

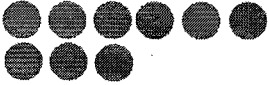



APPENDIX A

*Final Votes and Transcript of the Mixed-Use Development Collaborative Process
Workshop*

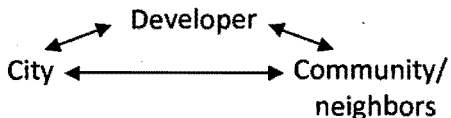
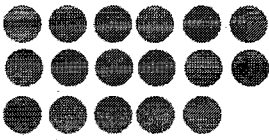
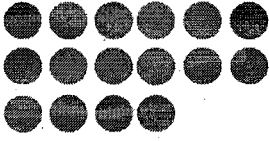


RED DOT RESULTS: MIXED-USE DEVELOPMENT COLLABORATIVE PROCESS
 (Listed within each topic results in descending order by number of red dots)

TOPICS AND IDEAS	VOTES
------------------	-------

ACCESS

Citywide impact assessment committee	
Involve neighborhood, community & regional interest groups	
Lengthy assessment process + collection of data	
Inform community Educate & vision Assessment committee Involve developer Gather data Early concept plan Land use	

DESIGN

<p>"Collaborative" process: commitment to reach agreement</p> 	
<p><u>Balance</u>: incentives great enough for developer to get project done & meet community goals</p>	
Proactive, flexible, predictable, transparent planning process	
Engage the public as early as possible	

TOPICS AND IDEAS	VOTES
------------------	-------

FISCAL IMPACTS

Fiscal impact cannot overshadow quality of life	● ● ● ●
Participate in establishing the scope	● ● ●
Bring the facts to the table	● ●
Provide opportunity for community to review & discuss the report	

HOUSING

Identify needs of population	● ● ● ● ● ● ● ● ●
Fact-finding: local information	● ●
Identify parameters & what is desirable	●
Opportunity to work w/ City/Professionals to help "see" options	

TRANSCRIPT: MIXED-USE DEVELOPMENT COLLABORATIVE PROCESS

ACCESS

- Neighborhood input and community input preferences
- Citywide impact assessment committee
- Neighborhood provides local traffic, pedestrian, access details
- Involvement of local interest groups (Bike Newton, Green Decade, etc.)
- Involvement of regional interest groups
- City neighbor associations
- Assessment process – 3 years
- Concern about ability of neighborhood to evaluate data
- Steps
 - Inform community
 - Vision and education
 - Assessment committee
 - Developer presents early concept plan
 - Gather data

- Deliver concept plan to City
- Land Use Committee – public hearing

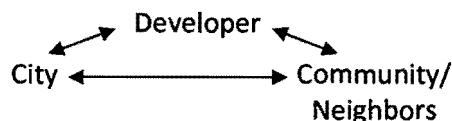
HOUSING

- Mix of housing (identify needs of the population)
- Knowledge of community functions
- Identify parameters of what is desirable
- Facts and local information based on experiential knowledge, fact finding
- Ground rules to establish fair process
- Opportunity to work with city resources/professional expertise to help “see” options
- Optimum time frame: no agreement

DESIGN

Numbered Points

1. Proactive planning (vs. reactive)
2. Engaging public in process a.s.a.p.
3. Flexibility as incentive to developer
4. Predictability
5. Timing – done early in process
6. Incentives great enough for developer to get project done and meet community goals
7. Tapping into neighbor’s expertise about site
8. Tensions between neighbors’ goals (local) and community (larger)
9. Respect for developers’ design process
10. Transparent process, allowing neighbors to help shape design outcome
11. Educate neighbors to design limits
12. “Collaborative” process: commitment to reach agreement



Background brainstorming

- Tension between developers and abutters → lowering planning quality?
- Bringing community into neighborhood process earlier beneficial or detrimental?
Timing?
- Balance between permeability? or buffer?
- Collaborative community process to precede development?
- Zoning incentives for development? What are the right incentives?
- Channel development to insure developer also profits
- Shorten process and relax dimensional and/or design requirements?
- How do you actively involve community beyond neighbors in planning process?
- Involving community early in process: (+), (-), (?)
- Conceptual review to ensure flexibility w/design changes...multiple options, alternatives?

- Neighbors understanding site and informing developer
- Timing
- Developer owns property prior to development or not?

FISCAL IMPACT

(Same as their four points listed above)

APPENDIX B

Concerns and Response

Memorandum Regarding Draft Mixed Use Element

To: Planning and Development Board, City of Newton, MA

**cc: Candace Havens, Director of Planning and Economic Development
City of Newton Alderman**

From: Riverside Station Neighborhood Coalition ("RSNC")

Date: March 17, 2011

Regarding: Draft Mixed Use Element, Collaborative Impact Assessments

Members of the steering committee of the RSNC and residents of Ward 4 have been following the work of the mixed use task force and attending public meetings with regard to the creation of the Draft Mixed Use Element due to its potential impact on any development at Riverside Station. The purpose of this memo is to provide some initial comments to the proposed document with more detailed comments to follow when the documents are in a more final format and before the Board of Alderman.

We applaud the City and its citizen volunteers efforts on the Mixed Use Task Force in taking the lead to create a Mixed Use Element to the City's 2007 Comprehensive Plan. It is a difficult subject as each area of Newton has different characteristics, concerns and potential. While we acknowledge that it is important for the City to have a real estate planning document that will encourage development that may have a positive fiscal impact on the City's finances, we also believe that the overall quality of life of the residents in a particular neighborhood that will be most directly affected by such development is equally, if not more important.

We were extremely disappointed at the Planning and Development Boards public comment session last month to learn that it was to discuss the "collaborative impact assessment document" rather than the mixed use element and therefore are extremely pleased that the planning board is making time to hear public comments to the proposed documents. Our basic comments are as follows:

Draft Mixed Use Element

1. It is unclear regarding which sections in the Comprehensive Plan this document will be amending, and which document controls as there is some overlap and repetition between the Comprehensive Plan and the Mixed Use Element. Will there be a more formal document that will integrate these documents to review in the future, and if so when will this be available for public review?

2. In general, the document reads more like a research paper without the footnotes rather than a planning document. It is extremely wordy, and this prolixity masks the basic concepts we believe the document is trying to express. The power point presentation at the planning board public meeting last month did a very good job of illustrating the basic goals and actions of the element. We therefore suggest that the document be reduced to high level goals and concepts along with suggested action items exclusively. One size does not fit all and the detail in the document leads one to believe it does.
3. Our concern about the commentary is that much of it is not sourced to factual information, and therefore appears to be opinions disguised as facts. For example, on page 2, the bullet at the bottom of the page states "Each Village center is made up of a mix of uses, not simply one dominant one". Perhaps we are reading this out of context but when we look at the existing village centers, they are primarily retail, with a small amount of office, and residential outside of the village centers. So the dominant use is retail. This is one example of many statements that do not appear to be based in facts. Riverside Station is not an existing village, and therefore has different attributes than the existing village centers so it is difficult to treat it as an existing village centers.
4. On Page 4, the second bullet refers to "bulk". We assume that the document is referring to the overall density of a development which is a more typical term used in planning documentation. We are concerned about this language as it appears to suggest that if you can hide the way it looks, than it is really not there and this needs to be balanced with the impacts the "bulk" or density of a project will trigger.
5. **Access and Transportation** –We have concerns about the guidance the Draft Element provides in this section. It appears that rather than starting with what is there, and what will work within the existing neighborhood elements, it relies heavily on mitigating impacts and takes away from the original concept of fitting the development to neighborhood and transportation goals. We think the order of events should be proper design, using what is there, and then look to mitigation. We are also concerned with mitigation as mentioned in the last bullet point of this section on page 8. It took ten years to get a speed bump in Newton Lower Falls after the development of Riverside Center. So putting money in a bank account does not mean the problems created by a development will be solved in an acceptable time period.
6. **Finance and Mixed Use** – This section seems rambling and undirected. The City has a policy of requesting fiscal impact assessments and having these reviewed by a third party. It is difficult to see what value all of this language adds to the planning document. This section should state that that the City will require a fiscal impact report, what elements the City will want in that report and a statement that this should be balanced with the impacts to the community, would suffice to address the particular subject.
7. **Mixed Use Guidance Process** – this appears to be something that one may include in a zoning amendment rather than a planning document.

Collaborative Impact Assessments

1. We support an effort to bring a neighborhood association into the planning process of a large scale development and the ability for a neighborhood association to weigh in on the scope of peer reviews. We believe this should be a general concept outlined in the mixed use element and that a separate document as currently provided is not appropriate.

Sincerely: Riverside Station Neighborhood Coalition – Steering Committee Members

LFIA member and Co-Chair, Lynne Sweet

President LFIA, Josh Krintzman

LNA member, Joel Shames

LNA member, Aub Harden

LNA member Michael Menadue

President, ACA, Nick Nesgos

ACA Board, Lynn Slobodin

ACA Board, Pat Costello

Please note that LFIA member and Co-Chair, Bill Renke has not participated in the drafting of this document because he is also a member of the Mixed Use Task Force and considers it a conflict of interest.



COMPREHENSIVE PLAN MIXED USE TASK FORCE

City of Newton, Massachusetts

Setti D. Warren, Mayor

Philip B. Herr, Committee Chair

Candace Havens, Interim Director Dept. of Planning & Development

Mixed Use Task Force Website

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http://www.newtonma.gov/Planning/mixed_use_tf/mixed_use.htm

Memorandum

To: Newton Planning & Development Board, Mayor's Mixed Use Task Force,
Candace Havens; Lynne Sweet
From: P. Herr
Date: March 17, 2011
Re: Riverside Station Neighborhood Coalition

Here are my thoughts re the suggestions sent by the Riverside Station Neighborhood Coalition March 17, 2011. It is helpful to receive suggestion from others, especially when they are from a strongly affected neighborhood. Based on my review of those suggestions, it appears that aside from stylistic questions, each of the comments can be answered quite directly.

DRAFT MIXED USE ELEMENT

1. Comment: unclear which Sections of the *Comp Plan* the amendment will be amending.

Response: the amendment is intended to be an additional element, framed so that alterations to other elements will not be required.

2. Comment: reduce language to more barely describe goals.

Response: the language style is much like that of the current *Plan*, not surprising since the authors are largely the same, and the 2007 *Plan* has been well-received.

3. Comment: discussion not sourced to factual information.

Response: again, the style is consistent with the existing *Plan*. Regarding the specific sentence in question, we will look further at a language revision, if warranted.

4. Comment: need to balance discussion of density and "bulk."

Response: this bullet in isolation is clearly speaking only of visual impact, whereas bullets above and below it speak of other impacts of bulk or density. We don't disagree that there is more than appearance involved, and believe that this section makes that very clear. We are suggesting a better process than is now

used for balancing appearance and traffic and employment and housing opportunities and project feasibility.

5. Comment: should start with what will work with neighborhood elements, and not rely heavily on mitigation, as the final bullet on page 8 is read as doing.

Response: again, we agree that mitigation should be a last resort, and believe that we have articulated that repeatedly, but are willing to look again at language to be sure that it is clear.

6. Comment: simply state that the City policy is to request a fiscal impact report.

Response: On page 12 bottom this point is covered, but this section of the draft also deals with a number of other key economic aspects of development that we and others feel are important to include.

7. Comment: mixed-use guidance process belongs in zoning, not a planning document.

Response: from the Mayor's initial request through the completion of our work process discussion has been requested. Doing so again parallels the approach of the existing *Plan*.

COLLABORATIVE IMPACT ASSESSMENT

1. Comment: a separate document on this is not appropriate.

Response: the Task Force judged that preparing a separate document would be helpful in clarifying our thoughts and that it would be helpful to others, as well. That document is not being proposed for adoption as a document.

Following this evening's meeting I will review these points again in order to assess any language revisions that might be warranted.

Comments submitted and delivered (3.17.11) by:

Bruce McVittie

11 Norumbega Court

Newton, MA 02466

[**Introduction:** As acknowledged best by Alderman Hess-Mahan last night, the current process is reactionary. The MUTF documents are a welcome attempt to be more proactive and give guidelines to developers. Thank you for tackling this. However, the current process is also confrontational. Confrontational because what the developers want always seems to be in conflict with what residents and neighbors are prepared to accept. And yet it is those neighbors who most directly bear the immediate costs of the development in terms of the nature of the development, its visual impact and the traffic that will result. The element as proposed doesn't go far enough, and isn't nearly sharp enough, in providing guidelines that will be acceptable to those most affected.]

Overall:

Emphasis is mis-placed. Seems to be on establishing what we can live with as degradation (massing, density, traffic, ...) rather than expecting the developer to improve the city in ways the residents want the city improved. A detailed reading of this plan provides no confidence that this will improve the city or its neighborhoods and no suggestion that this will reproduce the character that exists now. The emphasis should be on maintaining the character of the city throughout rather than allowing certain pockets to be changed b/c we think we need to do that to suit a developer's desire to maximize their own profit. Right now, the emphasis is on making it easy for a developer. It should be on protecting and maintaining interests of the residents of the city and more importantly the neighborhoods immediately affected by one of these developments.

[As an addendum: it is possible to make it easier for a developer by providing a consistent set of guidelines but without providing guidelines

Designing Mixed Use:

There is too much acceptance of the kind of massive development that is desirable for a developer but detested by the affected neighborhoods. Design of mixed use centers needs to focus more on the needs / desires of the residents who live in the neighborhood and less on the developers who may have only a monetary but little, if any, long term interest in the site or the city.

We need to maintain the character of the city without pockets of large scale development that do not fit that character and that do not integrate with the neighborhoods that surround them.

Establish "templates" of what a Newton friendly development would look like and require developers to choose one. If it is not in keeping with the surrounding neighborhood, the developer must justify and neighbors accept its use.

To establish templates, the city should conduct a survey, village by village, of the distinguishing characteristics of each village center. Obvious characteristics to survey: type and mix of uses, nature and facade of buildings, building height, building floor area, avg/min/max retail space by business, nature and mix of access, green space, etc.

Our villages have uses mixed at fine grain. Developments should also mix uses at a fine grain. There shouldn't be separate large scale blocks of retail or commercial or housing that are segregated from each other. In most villages, retail is focused on small neighborhood shops. This should be the model in any development.

Pedestrian and bicycle access to and within the site should be easy, and should be the priority.

In our current system, it is difficult to define where the village center ends. This should continue. Soft transitions such as this need to be provided on the site.

Honor the tree-line. Newton has a fine canopy and vista of mature trees. Developments should live within this.

Access and Transportation:

There is too much acceptance that there will be a significant increase in traffic and that this is OK as mitigation will take care of it. Residents are rightly skeptical as mitigation is not seen as working and is too frequently targeted at sites adjacent to the development when impacts can be experienced some distance away. Failed mitigations that require re-mitigation can take substantial periods of time – witness a speed bump in Lower Falls that took 10 years.

Statements like "development at a relatively high density creates enough value to enable *some level* of mitigation of the traffic impacts that it causes." Why shouldn't it fully mitigate the traffic impacts? Why should the neighborhood bear the brunt of the unmitigated impact?

Mitigation should be the last alternative, not the first. The focus should be design, re-design and design again before thinking about mitigation.

The priority should be:

1. Create a design that doesn't create a lot of additional traffic. Change the scale and proposed uses. Relocate buildings on the site. Traffic should be segmented and each type managed separately.
2. Take advantage of the infrastructure that is available. Streets should only be used for residential traffic with commercial traffic on major roads. Take advantage of and utilize any highways without forcing all the traffic onto the surface roads. If public transportation is available, reduce the number of parking spaces – residential and commercial. If a significant amount of the traffic for the development is expected to need to travel on streets that can't handle the traffic without mitigation, re-design and scale the development accordingly. Don't try to force a big development and then mitigate.
3. Strengthen the provisions for pedestrian and bicycle traffic. It's not enough to encourage pedestrian / bicycle traffic by ensuring that provisions for vehicular traffic don't interfere with bicycle and pedestrian access. The emphasis should be on actively discouraging vehicular traffic and giving pedestrian/bicycle traffic priority. Whether by restricting parking spaces, separating parking from destination, low speed limits, ...
4. Develop and propose the neighborhood parking restrictions – and an enforcement plan – as part of the development proposal. Based on typical walking distances (now and projected) what parking restrictions does a developer think will be necessary to ensure that the neighborhood doesn't become an extended parking lot for overflow traffic from the development?

5. Explicitly consider safety issues. Impacts on schools –particularly elementary schools – school walking routes, senior centers, and housing for disabled residents all need to be considered.
6. Finally, mitigation can be considered. But mitigation needs to extend beyond the immediate vicinity to be sensitive to other obvious, and not-so-obvious problem areas that might be identified by a traffic study. Neighborhood schools or children travelling to school on the streets and roads that will be affected. Senior centers. Housing for disabled residents.
7. Demand and expect creativity and proactive solutions from developers. As a neighbor, the Riverside developers have done a particularly poor job. The Route 9 developers did a better job but why did the neighbors need to complain and Brookline threaten a lawsuit before it happened?

DRAFT



NEWTON MAYOR'S MIXED USE TASK FORCE

City of Newton, Massachusetts
Setti D. Warren, Mayor
Philip B. Herr, Committee Chair
Candace Havens, Interim Director Dept. of Planning & Development
Mixed Use Task Force Website

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DRAFT MIXED USE CENTERS ELEMENT

October 8, 2010

Mayor Warren appointed a 20-member Mixed Use Task Force in June, 2010, and asked the members to prepare a draft modification of the 2007 *Newton Comprehensive Plan* to deal with mixed use centers. The following is the final Task Force draft for such a modification, structured as a new element to be inserted into that *Plan*.

Following review by the Mayor and any resulting changes having been made by the Task Force, the Draft will be sent to the Board of Aldermen for its review and potential adoption. Prior to adoption, the Draft will be reviewed and reported on by the Planning and Development Board, probably following a public workshop on it. After receipt of the Planning and Development Board report a public hearing will be held by the appropriate committee of the Board of Aldermen, following which the full Board will vote on approval or not of the modification.

Two additional items have been prepared by the Mayor's Task Force as informational materials as of this same date but are not intended for adoption into the *Comprehensive Plan*. "Collaborative Impact Assessments" expands upon material in the draft element regarding impact studies to be made early in the project design process, bringing together those proposing the development, City staff and officials, and citizens from the vicinity and beyond. "Illustrative Performance-Based PMBD" sketches how the existing City Zoning governing mixed use centers might be modified to reflect the proposed *Comprehensive Plan* modification and "Collaborative Impact Assessments."

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"Plans are nothing – planning is everything."

Dwight Eisenhower

1. VISION

The livability of Newton has been greatly enhanced by its traditional mixed-use village centers. The future livability of the City can be further enhanced through the creation of a number of well-located and well-designed new mixed-use centers. Those centers should be exemplars of excellence in place-making, being great places in which to work, live, shop, recreate, or just visit and be within. In doing so they would accommodate a share of the modest amount of growth that is anticipated and planned for by the City, as outlined elsewhere in this *Comprehensive Plan*. Doing so would help avoid growth straining the scale and ambiance of existing centers and without overburdening the capacity of the locations where these new centers are to be developed. They would further benefit the City by adding both jobs and fiscal support. Careful guidance should assure that the interests of the vicinities within which they are sited are given careful consideration regarding the location, programming, and design of these new centers.

2. STRATEGY

To achieve that vision the City needs an approach that makes the creation of such integrated mixed-use centers not only possible, which they are today (with the first such currently undergoing review), but also attractive to both those who might propose them and those impacted by them. Mixed use development on appropriate sites needs to be made more appealing to those doing development than would be the more usual separations among business, residential, and civic development. Since no feasible wholly vacant site for such use appears to exist anywhere in the City, such development also has to be more attractive than continuing existing under-utilization of already developed land. Finally, such mixed use development should be responsive to what the City seeks rather than, as has too often been true, having the City revise its plans to accommodate those of developers.

To achieve that, the City needs a decision-making structure that provides advance clarity of intentions, sensible guidance, and reasonable regulatory and financial requirements. For those planning development, the approach should facilitate prompt decisions and provide predictability about what will or will not be likely to gain approval. For people in nearby neighborhoods the approach should provide predictability about the limits to potential impacts of development and a well-defined role in the process of managing it, going beyond the minimum requirements for public voice as stipulated in statutory law.

An important step in satisfying those conditions will be the adoption of this element of the *Comprehensive Plan*. Another will be the adoption of zoning revisions that will address the now-evident obstacles to usage of our existing PMBD mixed-use regulations. Still another important step will be the structuring of a review process that supports collaborative evaluation

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in a process involving both City and applicant-supported professionals and community citizens seeking a shared understanding of impacts early in the planning process.

The reality of having two new mixed-use developments currently being proposed strongly colors the timing and strategic approach for the preparation of this Element of the *Comprehensive Plan* and of the implementing steps that it calls for. In light of that, this sequence of efforts is needed.

- As we have been doing in recent months, people from a broad variety of perspectives need to be engaged in shaping an image of what good mixed-use development for Newton would be, and what the essentials of a good process for achieving that would be. That effort was begun during the preparation of this element, and should continue through all of the steps to follow.
- This Mixed Use Centers element for the *Comprehensive Plan* needs to be adopted, which will formally evidence that the element appropriately reflects City intentions.
- The basic regulatory measures necessary for implementing the *Plan's* intentions need to be adopted. Doing so will give further evidence of the City's intentions, and will provide the basic regulations needed to better guide this form of development.
- The tools and procedures for a collaborative input and review process need to be put in place, assuring a well-structured and well-informed voice for both neighborhoods and Citywide interests to assist in enabling those proposing development and for the City officials and staff to give shape to developments that will be rewarding from all of those perspectives. This will involve not only regulatory efforts but also developing needed analytic tools and structuring needed participatory processes.

3. DESIGNING MIXED USE

Background

Unlike new mixed-use centers, Newton's villages grew incrementally over several centuries of profound change and at the hands of many actors. Despite those and other differences between then and now, locating, programming, and designing new mixed use would do well to learn from our existing village centers. One lesson is that while the full set of villages serves us well, those centers are highly individual. No tight template governing their development would have produced as good an outcome as has some invisible hand that has allowed broad variations. However, the set of village places does have some powerful consistencies, and those are critical to their success. In guiding development of new mixed use, we shouldn't be overly prescriptive about how development should be shaped, but should be firm about assuring consistency with those qualities that have historically proven critical to success in Newton's development.

These are important among them.

- Each village center is made up of a mix of uses, not simply one dominant one.

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- The uses are not segregated from each other but rather are mixed at fine grain.
- They are easy to move within and among on foot.
- To a greater or lesser extent, the uses are interrelated, to some degree serving or depending on each other, so that the adjacencies and integration are not just symbolic, they are functional.
- It is usually hard to define where the village center ends: the zoning map came too late to dictate otherwise. To successfully replicate that kind of "soft" transition from center to surroundings is challenging, but critically important in the long term.

Guidance

The lessons from our existing villages are clear. The design intention for mixed use development should be to create positive, even integrating, relationships with the surrounding context, not buffering the new from the existing, unless dictated otherwise by unusual circumstances. Functional and visual integration of uses within the development is critical for supporting vitality. Shared places or spaces or both are critical to that intention, which suggests new buildings oriented to both new and existing streets they share with others, not turning their backs on them, or alternatively using some other means, such as shared common connected outdoor spaces, to accomplish comparable integration.

The vitality sought can be achieved only given a true sharing of place among dwellings and businesses, and having at least some businesses that provide nearby residents with jobs or services or other benefits. Connections by both street and pedestrian pathways are critical to accomplishing that. There should be both precedent and flexibility regarding the categories of use that are part of the mix, and there should be flexibility for the location of those uses within the center regardless of the configuration of the underlying zoning districts in order to achieve the overall design intent.

Truly vibrant mixed use centers typically involve not only a mix of commercial and residential uses but also include a significant public amenity that helps in the creation of a sense of place. They typically are co-located at an accessible public transportation node. It is important both functionally and symbolically for the pathway from residences to public transportation to be an easy and pleasurable one.

Mixed use development absent one or more of the above qualities is certainly possible, but lacking them would make it more difficult to achieve the kind of outcome that is being sought, so would require some offsetting contributions through programming, design or location.

The shaping of buildings and spaces so as to achieve the goals being sought should be guided by an insistence upon consistency of outcomes with intentions such as the following, to which the complex tables of numerical rules would be made secondary.

- The shaping of buildings and spaces should be respectful of and compatible with the context within which the development is to be located, ideally conveying an image of

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having an organic consistency with its environs without mimicry or preclusion of well-designed differences in massing and scale.

- For example, exceeding the height of the highest nearby buildings might be allowed, but only upon finding that any shadow effects, view blockage, or departure from established precedents would not be a damaging intrusion, and evidence that the increased height would enable a superior organization of buildings and open spaces, benefitting the overall design.
 - Similarly, the acceptable amount of bulk will depend in part on the visual impact of that bulk. A skillful massing design can make a relatively high level of bulk preferable visually to a smaller but less suitably configured amount of bulk.
 - In addition, there are other considerations in assessing the acceptable amount of bulk, importantly including the ability of the public infrastructure to support the functional demands associated with bulk and the activities it supports, such as traffic, for which metrics for what is “acceptable” should be defined. By managing bulk in this way, for example, efforts towards reducing dependence on single-occupant auto travel would be rewarded with proportionately lightened bulk limits if traffic were the limiting bulk consideration.
- The configuration of buildings and landscaping should create positive outdoor spaces, contributing to the quality of the experience of visiting the place, and not just be vegetated (open space) leftovers between buildings.
 - Respect for the environment that goes beyond minimally satisfying land use and environmental requirements is expected as a part of achieving contextual integration.
 - Roofscapes should be made into positive assets through their design and forms of usage, providing functional benefits (e.g. solar energy conversion, recreation) as well as visual interest and attractiveness as seen from buildings within and neighboring the development.
 - Creative use should be made of the potential of vertically mixed uses in considering the distribution of uses within and beyond the development.
 - Good-faith efforts should be made both during, and subsequent to, development to enhance the extent to which the entire center benefits Newton residents through targeted employee recruitment efforts, training or apprenticeship opportunities, or similar initiatives.

Other design considerations are articulated in the access, housing, and finance sections.

Actions

- Make efforts to develop guidance more concrete than included here to provide a basis for judging the appropriateness of new development, carefully reflecting the reality that Newton

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isn't, say, Williamsburg. A cherished quality of the City is that "appropriateness" varies sharply among the villages and other sub-areas of the City. The outcome might be a set of design guidelines such as are commonly developed for communities or neighborhoods.

Even better, the guidance might include modeling that uses measurable metrics for determining early if a proposal, after considering its location, site size, building size, mix of uses and design, is likely to be appropriate. Having such metrics can reduce arbitrariness and increase predictability, much as is done with great complexity by LEED, which dares to be prescriptive and measurable about this topic for the whole of the United States. Much the same was done with great simplicity by the point system in the Santa Fe *Architectural Design Review Handbook* (1988) prepared by Santa Fe architects and planners for a community thought to be visually homogenous only by those who don't know it well. Less exceptional descendants of such work also exist (e.g. "Workbook for Successful Redevelopment," Naperville, IL, 2002).

- Where the above guidance appears appropriately applicable for development other than large-scale mixed use centers, that guidance should be incorporated into either Newton's Zoning or some other enforceable guidance to be adopted by the Board of Aldermen.

4. ACCESS AND TRANSPORTATION

Background

The Transportation and Mobility element of the *Comprehensive Plan* makes clear a planning intention that is important to planning for mixed use development centers since they are inherently well-suited to help in meeting the cited objective.

"We want to assure that the design of new development is well-related to the transportation system that the City intends, rather than development dictating what that system must be, just as fully as we want the design of the transportation system to be well-related to the development that the City intends, rather than serving only the City as it exists or as predicted rather than intended."

Guidance

By locating a mix of uses within a compact area some trips that otherwise would be made in autos can be made on foot. By concentrating a substantial amount of development, mixed use centers also concentrate potential trip ends, improving the feasibility of alternatives to single-occupant auto trips, ranging anywhere from car pooling to rail transit, even enhancing the feasibility of shuttle bus connections. Bicycle access and pedestrian access both between uses within the development and between those uses and ones in the off-site areas around them can substantially reduce the share of trips made by auto if alternative means of access are made easy, safe and pleasant. No mixed-use center should fail to make those efforts.

The mix of uses within the development can within limits be managed to reduce the amount of traffic generated. Trip generation in relation to building floor area varies widely between residential

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on the low end to retail on the high end. Including more housing and less retailing means fewer trips from the same amount of floor area. Further efforts at trip and parking demand management become feasible where mixed use centers have an over-arching management structure. Car-pooling, company parking protocols and vans, incentives for employee and others to use public transportation, all can contribute to auto trip reduction.

Finally, development at a relatively high density creates enough value to enable some level of mitigation of the traffic impacts that it causes. That mitigation will be welcomed by neighbors and others when it facilitates provision or enhancement of public transportation, removal of existing safety concerns or traffic flow impediments, or skillful traffic engineering at intersections, which often can greatly improve traffic movement with little physical change. However, choices get harder when the scale, mix of uses, and feasible alternative mode and demand management efforts are inadequate to offset trip volumes projected from the development.

The way the City addresses those hard choices should be no different for mixed-use development than for single-use development. The location, programming, design, and management of all major developments and the access provisions related to them should be guided so that conjunctively they essentially cause no harm, meaning among other things that the ease of travel by persons of all abilities regardless of mode is not materially worsened as a result of the development and its related "mitigations," and the means of achieving that do not do damage to community or environmental values, thereby damaging the qualities of the City that we want. We don't want quiet residential streets to be turned into major arteries, even if doing so allows traffic to flow more easily than before, any more than we want to see accessibility for pedestrians or bicyclists damaged in order to facilitate auto travel. Whether or not at the expense of the developer, we don't want to have to accept new concrete sound barriers to block new traffic noise in order to accommodate a major new development.¹

There are measurable "warning flags" that could alert both City officials and developers that such unacceptable circumstances may potentially be involved, despite all of the design and programming skill provided up to that point. The percentage of increase in traffic which a new development is likely to place on any street, whether a lane or an expressway, is an indicator of the likelihood that avoiding travel deterioration will entail street alterations which could be damaging to the nearby quality of life. Where a proposal crosses that threshold of concern, special attention and resolution of any concerns should be called for, possibly entailing project programming revision, additional transportation management efforts, skilled design of the street alterations so that on balance they are acceptable, or through reduction in the proposed scale of the development. Testing for such flags can be done simply and inexpensively early in the design process, saving missteps.

Certain access efforts are particularly critical for large scale mixed use developments because of their scale, mix of uses, and the importance of their being integrated with their surroundings. These are examples

¹ The principles behind these intentions are drawn from ones advocated nationally by two organizations: "Complete Streets" whose website is www.completestreets.org and "Context Sensitive Solutions," whose website is www.contextsensitivesolutions.org.

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- 1) Mixed-use developments should have excellent pedestrian and bicycle connections both among different uses within the site and between those uses and the surrounding environs. The new developments should be permeable through interconnections to adjacent developments, wherever possible both by foot and by auto. Visible and adequate bicycle storage areas, and appropriate changing locations with showers for office users, will help support the use of bicycles for commuting.
- 2) The visual and environmental impacts of surface parking should be mitigated and pedestrian accessibility enhanced through locating and designing parking facilities with that in mind, not obliging pedestrians to cross open parking lots in order to reach their destinations.
- 3) Where feasible, accommodate parking in structures, but use surface parking where it can be positive, such as in buffering pedestrians from moving traffic.
- 4) Wherever possible the visual impact of parking facilities should be mitigated with intervening retail or other uses, unless those facilities are of rare design quality themselves².

Actions

- Expand on the contents of the City's street functional classification system in order to make it more useful. Currently it is only a listing of the street segments that are included under each of six categories. Added to that should be information regarding the street design and usage that are appropriate for that category of streets. That would provide important policy guidance in assessing the appropriateness of street modifications that might be proposed in relation to large-scale development.
- Complement the street functional classification system by adopting a design type classification, as proposed in the "Transportation and Mobility" element of this *Plan*. The *Plan* shows six design categories ranging from Regional Center Roads to Parkways. Just as with the functional classification, this classification should include information about what is or is not appropriate change to the road for consistency with each design type. Having done that would provide predictability for those contemplating large scale developments that might entail street changes, and would be of great value in evaluating such proposals regarding the consistency of project-proposed street alterations with the City's intentions for the design and character of any affected roads.
- Develop an in-City capacity for early collaborative concept-level estimation of the access and traffic impacts of major developments, better than back of envelope, but quicker and less demanding than the sophisticated studies that would continue to be the basis for final design and approval actions. That capacity would enable an important aspect of the collaborative input and review approach described in the Vision above, engaging City officials and staff, the applicants, and community residents.

² See Paul Goldberger, The Sky Line, "Wheelhouse," *New Yorker*, August 9, 2010, describing an example in Miami Beach designed by Herzog & deMeuron.

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- Develop an initial version of the “red flag” system suggested above to provide guidance to both those designing developments and those reviewing them regarding when traffic impacts threaten to result in unacceptable impacts as a consequence of either excessive congestion and disturbance or community and environmental damage to the environs. This would draw upon the above impact estimation. After some experience that system might be further refined and made an integral part of the City’s decision-making system.
- If feasible, integrate this “red flag” system with the parallel one being suggested regarding design and the “acceptable amount of bulk.”
- At the point at which it appears that Massachusetts law would allow it (such as authorization for local municipalities to create general development impact fees), explore creation of a transportation mitigation fund, which among other things would allow traffic mitigation resources to be used for any of a broad range of mitigating actions, not just ones related to road and traffic engineering alterations.

5. HOUSING IN MIXED USE

Background

The inclusion of residences in mixed use developments has at least three important benefits for Newton. First, if well located, programmed, and designed such a mix of uses can enable new development to enhance our existing community rather than needing to be buffered from it. Such real mixed use can provide wonderfully vital places in which to shop, work, live, or all three, and can help make the development a welcome asset for the neighborhood.

Second, the increasing success of the mixed use model makes it a valuable means of serving part of the housing needs of the City and the region. The housing in mixed use developments is almost certain to chiefly serve young households and senior citizens, neither of which is well served by Newton’s existing dominantly large-dwelling housing stock.

Third, incorporation of dwellings in the development can make the spatial transitions between the development and any adjoining or nearby residential uses a less disruptive one than otherwise, enabling the new uses at those edges to be as compatible as possible with the existing neighborhood.

The benefits of including housing in large-scale centers is widely understood, but so too are the challenges to achieving that. Among them is the complex volatility of real estate markets, with housing, shopping, workplace and entertainment markets seldom moving in smooth unison, raising the challenge of how to achieve integration of those uses to produce the sought-after vibrancy when markets may make it nearly impossible at times to simultaneously develop all of them. That is one of the key issues dealt with below.

Guidance

Housing either within or adjacent and integrated with major centers can provide a kind of vitality and fruitful contributions to the creation of wonderful places and an improved quality of life that

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centers without such housing may not be able to achieve. The presence of housing within the development impacts considerations for location and design. Accordingly, the process being developed for City review and approval of proposals for mixed use centers reflects having that mix, and all of the following presumes that full rich mix.

The housing within the development should have a clear identity as an important and distinct element, not being simply an after-thought or rule-satisfier. A small number of dwelling units surrounded by business uses and its parking makes it difficult to achieve that which is sought. Housing to be developed as a part of a mixed-use development must be sufficient in scale so that together with possible existing adjacent residential uses it can result in a real neighborhood being created, rather than the housing being an isolated residential fragment in a non-supportive, potentially even hostile, non-residential context. For that reason, it is important for the regulations guiding such development to have clear and explicit guidance on what is to constitute a sufficient housing component while also recognizing that the changing demands of the commercial real estate market may favor specific uses (i.e. retail, office, housing, and hotel) and not others in various market cycles.

Housing that already exists nearby can importantly contribute to the vitality and exchange that is sought, but achieving that would require skillful design of how the new buildings and uses relate to the existing ones as well as program efforts. Those might include enabling nearby residents to have easy access to the services being provided on-site, assuring that those services are appropriate to the neighbors, as well as to others, and if programmatically provided for, enabling neighbors to gain benefits from both open space and parking.

Given such measures, neighboring off-site units might be considered to be part of the development in determining the allowable scale of non-residential presence as discussed above, where there is evidence that the owners and residents of that adjacent housing have indicated their willing agreement with that inclusion.

Including adjacent residences within the programming concept and "counting" is one means of recognizing market uncertainties inhibiting simultaneous residential and non-residential development. Additionally, any required minimum residential component might be programmed to be provided at a different time than other uses in order to reflect market conditions, but only if there are offsetting benefits that compensate for the delay and also enforceable assurances that the mandated ratio will in fact be attained within a reasonable period of time.

It is important that housing commitments be firmly guided regarding type, location, design and timing of construction in order to produce the kind of vitality and great places being sought. Housing provisions should reflect both the populations appropriately served at that place and time and the amenities in that environment, chosen following discussion with related City officials and housing-related organizations.

Parking demand created by mixed-use developments will reflect the mix of activities, proximity to public transportation, and project-wide demand management efforts. Those considerations may substantially change parking demand, thereby justifying departure from the usual rules of Newton's parking standards when substantiated by, among other things, recent experience in this and surrounding communities with similar developments.

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Compliance with the usual rules for regulating business activity conducted in a dwelling should not be required, although alternative controls to assure an appropriate ambiance for family living should apply. Such development might even allow “live/work” units combining both living and working space with the spatial allocation between them subject to change over time.

Open space is essential, including some amount reasonably located for use exclusively by residents and their guests. Unusual but tried ways of providing open space such as green terraces and roofs may help in meeting this need.

It is important that the type of housing being produced within the City helps to address needs not being well-served by the existing stock of housing, and unless direction is provided, the housing being produced also may not well serve those needs. A current example is the need for housing suitable for seniors at most income levels seeking to down-size or, sometimes, upsize their accommodations.

Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the impacts of the housing upon the adequacy of each of the affected school facilities that are likely to accommodate its enrollment impacts.

6. FINANCE AND MIXED USE

Background

New mixed-use centers clearly can bring substantial amounts of new revenue and new jobs to the City, but too commonly what is claimed and discussed is gross impacts on revenue and jobs, not the net impact after taking into consideration second-order impacts. Those second-order impacts are more difficult to estimate than the gross impacts, but they deserve attention anyhow, since they are often very large, and considering them may substantially change perceptions about development proposal benefits, for better or worse.

Taxes perhaps best illustrate the point. New development brings new tax revenues, but it also brings new service demands. Those costs in some cases can turn what seemed to be a fiscal asset into a fiscal liability. If a new retail development chiefly serves Newton then it likely competes with businesses already here, so that its NET impacts on taxes may well be substantially lower than its gross impacts. On the other hand, the opposite could be true. Some businesses, even local ones, can attract other businesses or support existing ones with their purchases, resulting in those other businesses prospering and expanding, resulting in larger fiscal impacts than just those of their own properties. Similar second order impacts deserve attention when considering jobs, traffic, and other impacts.

The benefits of fiscal gain are readily understood, in part because they are so clearly local. Property taxes generated in Newton go to the City of Newton and benefit its residents. The benefits of gaining jobs are less self-evident, in part because in a metropolitan area they are seen

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as regional. New jobs located in Newton will largely be held by non-residents of Newton, and workers resident in Newton largely hold jobs not in Newton but elsewhere within the metropolitan area. However, there are a number of good reasons for caring about bringing jobs to Newton, aside from the tax support they bring with them.

First, bringing jobs to Newton to some extent means more jobs for the region and for Massachusetts, and that is good for everyone. Second, the City is expected to grow somewhat in population over the years, and there will be benefits if the current balance of the number of jobs held by Newton residents and the number of Newton residents who hold jobs can be maintained. Such "balance" is a widely sought goal. Newton has it, and has had it, more or less, for decades. Losing that balance would mean more commuter traffic and more dependence on other places.

Three mixed-use centers have recently been discussed within Newton, totaling perhaps 1.5 million square feet of non-residential floor area and about 600 dwelling units, one (Chestnut Hill Square) is currently under review. The total amount of business floor area among the three is sufficient to accommodate nearly 4,000 jobs, an 8% addition to the current total of jobs in Newton, while that amount of housing would be a 2% increase in the Citywide total. Together their tax payments ("New Growth" in Prop 2½ terms) at current rates would be about \$13 million, about a 7% increase in the annual City-wide tax levy allowed under Prop 2 ½. Those amounts of growth are not inconsistent with the expectations and projections for growth made in the Newton *Comprehensive Plan*. As noted above, net figures will change after considering economic "multipliers" and accounting for unavoidable new expenses and "shifting" rather than "creating" jobs and housing, but despite that the above figures provide a helpful background.

Guidance

It is well-understood that business development in Newton pays in taxes and fees substantially more than it costs the municipality to serve it, offsetting the reality that on average taxes and fees paid by residents are somewhat lower than the costs of municipal services for them. What happens to the fiscal balance when mixed use development combines both business and residences?

The market for housing in mixed use centers will unquestionably be largely at opposite ends of the adult life cycle, young couples and empty-nesters. Data from the Newton School Department make clear that the ratio of enrolled pupils to dwelling units is far lower in multi-family dwellings than in single-family ones. Reflecting that, analyses make it clear that on average the tax revenues and tax-supported costs for dwelling units in multifamily developments, including those units whose values and legitimate tax payments are restricted to a below-market level, are almost equal, if anything providing a small positive balance to the overall tax impact. That means that the fiscal impact of mixed-use developments is almost independent of the number of dwelling units they contain, but rather chiefly reflects the favorable balance resulting from the well-understood positive impacts of business development. Importantly, that means that choosing the amount of housing to include in such developments can be considered independent of concern over fiscal impacts.

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- Clarify and document the City's requirements regarding development-related impact fees and exactions.

By paying taxes new development supports City costs, including those associated with the facilities and services for which it creates need. When that need is quite location-specific, it is common to have the development causing the cost bear at least part of it through absorbing public improvement costs, monetary contribution, or some other form of contribution. Current Massachusetts law is not generous in allowing for impact fees or exactions. Statutory authorizations for such treatment are few and narrow, and the courts view of constitutionality has been sharply restrictive. Despite that, some Massachusetts municipalities have home rule legislation authorizing significant charges to be made. Newton's current practices in that regard result in quite substantial efforts by developers to, in effect, restore net capacity of certain infrastructure to what it was without that development. The Commonwealth does the same through the MEPA process for certain costs, importantly highway transportation. However some cost generators, notably school impacts, have not been treated in that way. In short, Newton could do more, but only within limits.

However, there is no apparent rationale for charging fees to mitigate impacts for mixed-use developments but not for single-use developments having equal or larger impacts. Doing so could create a disincentive for developers to propose development under the mixed-use regulations being advocated. If City intent is to establish this type of policy, any impact fee requirements should be addressed as applying to ALL new development, and not uniquely to mixed-use development.

Quite apart from what the City does or does not do about mixed use development, the City should set out clear and reasonable expectations about the fiscal mitigation it expects *before* it considers large developments. Whether these are transportation or other fiscal impacts, developers should be able to know--in advance-- how our community expects new development to deal with the impacts it creates and what mitigation is reasonable. One by one, *ad hoc* negotiation may not be efficient or equitable for either the City or developers. While it is recognized that new development impact identification often results during the special permit process, we should at least document our expectations in one place so that developers know how to translate our values into project costs without surprise, and so that community residents can know what can or cannot equitably be asked of new development.

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the fiscal impacts of the proposed development upon the City.

Fiscal consequences are properly a significant consideration regarding major development, whether mixed-use or not. Models for producing projections of such impacts are commonplace, but they almost all share the quality of producing projections that lack credibility among those who don't like what they hear unless those persons themselves were a part of producing the projections. Newton should create a system which gives all parties a hand in the analysis, sharing the effort, and hopefully sharing confidence in the outcome. The City

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should specify the scoping requirements, prepare the mathematical/metric models to be used, and assist but not dominate the execution. The developers and interested community members would help in utilization of the modeling by gathering information and critiquing its use. Doing the job that way is more difficult than hiring a consultant to write a report, but is far more valuable for the decision-making process.

Note that this step would serve to integrate other collaborative efforts that have been called for above, including traffic analyses, school impact analyses, and others.

- Make efforts to use mixed-use development as a means of improving the local job-gaining likelihood of persons for whom our housing efforts are trying to make Newton a welcoming community.

If resources for doing so can be found, such an effort would be highly supportive of the policy intent of supporting socio-economic diversity in Newton which now is being implemented almost exclusively through support for below-market housing.

7. MIXED USE GUIDANCE PROCESS

Background

Mixed-use developments can be created under the City's existing zoning, as is currently proposed at Chestnut Hill Square, and there is every reason to hope that upon their completion such developments will be of benefit for the City. This amendment to the *Newton Comprehensive Plan* makes the City's intentions about such developments clearer, intended to encourage creation of such developments and to guide both applicants and those responding to their proposals.

However, resting on existing rules and the *Comprehensive Plan* alone would for mixed use developments fall short of what can be accomplished using the process refinements suggested in this Element of the *Plan*. The likelihood of developers choosing mixed use development and the City gaining the benefits of it will be greatly enhanced by the City taking actions to improve both the regulatory framework for such development and the context for how City agencies and staff, those doing development, affected neighborhoods and other affected interests relate to each other in the consideration and approval of such proposals.

Guidance and Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community efforts to create objective projections of the likely impacts of large-scale development upon the vicinity and the City at large.

Action proposals for doing this are included above in the Design discussion regarding impacts upon neighborhood character and the environment; in the Access and Transportation discussion about traffic and the "red flags" it might raise; in the Housing discussion about impact upon schools; and in the Finance portion regarding fiscal impacts. Each of those.

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subjects has been part of the debate regarding each of the three mixed use developments that have been proposed. The only one of those topics that has had the benefit of publicly-discussed analytics to inform the decisions has been traffic.

Well-informed dialog about traffic has largely involved consultants to the developer, City staff, consultants to the City, and MassDOT engineers. Not surprisingly, given how “black box” that dialog has been, the results have often not been persuasive for many of the parties that have been concerned about such developments. There often may be no public agreement even on the scale of traffic impacts, let alone agreement on appropriate mitigations.

Beyond traffic, there has been discussion and assertions on the other topics, but no real public dialog supported by credible analyses. The debate about project approvals in some cases has lacked agreed-upon estimates of even the range within which important impacts are likely to fall.

Newton City government is rich in data, both historic and current. The City is rich among its population as well as among its (busy) staff in expertise on how to utilize those data resources to produce helpful estimates and projections. So, too, are the developers of major projects and their consultants. What would be helpful would be to organize a way of using all of those resources in a well-structured way early in the evolution of development proposals. That could support informed understanding of what can be agreed upon regarding the range within which impacts of development are likely to lie, not only for traffic but also for a range of equally important topics in other areas of concern: design, schools, and taxes; and not only agreement among technicians, but also including members of the public.

Doing that would give new value to the data that the City carefully collects, and if skillfully managed might go far towards reducing conflict in the shaping of new development, ultimately reducing costs for all parties, and reducing the time needed to reach decisions.

- Adopt amendments to the existing zoning that will improve the process for approval of such developments so that they can work better for applicants, for the affected vicinities and interests, and for the City.

There now is a body of experience in Newton that helps to identify where changes would be of value. When the Northland proposal was active, the developer asked for changes to PMBD to fit their development on Needham Street, and those zoning requests were given a formal public hearing prior to the withdrawal of the project. BH-Normandy has suggested a different set of revisions for its proposed development at Riverside. Each sought different changes to the height and setback regulations, land use rules, open space rules, and parking or loading rules, as well as individually seeking other departures, as well.

The need for project-specific relief in each of these cases is no surprise, given the large scale of the developments proposed, and the history of the City’s regulatory processes, in which zoning rules and action on special permits relying on such change are often taken in tandem. It is perfectly reasonable for Aldermen to want to have a specific example of what a regulatory change would entail before adopting it. That is how the B-4 district and many other provisions have been created or revised.

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It is critically important to structure such change processes so as to avoid overburdening the Zoning Ordinance with a steadily expanding set of project-specific departures. At least equally important, we should have a structure that provides advance clarity about what changes may appropriately be made to reflect project-specific considerations, and which ought to be universally applicable, to be relied upon under all circumstances.

Given that in the past two years three such large-scale mixed use developments have been proposed in Newton, and a number of others in nearby communities, it is important for the City to put those major changes into place in the near future. Clearly the best way to accomplish that would be through a carefully prepared set of revisions to the existing Planned Mixed Business Development (PMBD) zoning, leaving for some future effort those features requiring longer consideration.

- Consider the potential applicability of much of the guidance of this element for developments that are smaller in scale than the very large ones for which this material has been developed, and for our existing village centers in which the mix of uses is on separate lots developed not at once but rather over many decades.

Good regulation for large-scale mixed residential/commercial developments will contain a number of provisions that would be inappropriate in those other contexts, most obviously the insistence upon integration of a residential presence, as well as a number of other provisions that flow from that. However, many of the provisions in this Element would be perfectly appropriate in many other contexts. Where applicable, the potential benefits of this effort for those other kinds of circumstances deserve to be pursued.

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NEWTON MAYOR'S MIXED USE TASK FORCE

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DRAFT MIXED-USE CENTERS ELEMENT

October 8, 2010

Mayor Warren appointed a 20-member Mixed Use Task Force in June, 2010, and asked the members to prepare a draft modification of the 2007 *Newton Comprehensive Plan* to deal with mixed-use centers. The following is the final Task Force draft for such a modification, structured as a new element to be inserted into that *Plan*.

Following review by the Mayor and any resulting changes having been made by the Task Force, the Draft will be sent to the Board of Aldermen for its review and potential adoption. Prior to adoption, the Draft will be reviewed and reported on by the Planning and Development Board, probably following a public workshop on it. After receipt of the Planning and Development Board report a public hearing will be held by the appropriate committee of the Board of Aldermen, following which the full Board will vote on approval or not of the modification.

Two additional items have been prepared by the Mayor's Task Force as informational materials as of this same date but are not intended for adoption into the *Comprehensive Plan*. "Collaborative Impact Assessments" expands upon material in the draft element regarding impact studies to be made early in the project design process, bringing together those proposing the development, City staff and officials, and citizens from the vicinity and beyond. "Illustrative Performance-Based PMBD" sketches how the existing City Zoning governing mixed-use centers might be modified to reflect the proposed *Comprehensive Plan* modification and "Collaborative Impact Assessments."

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"Plans are nothing – planning is everything."

Dwight Eisenhower

1. VISION

The livability of Newton has been greatly enhanced by its traditional mixed-use village centers. The future livability of the City can be further enhanced through the creation of a number of well-located and well-designed new mixed-use centers. Those centers should be exemplars of excellence in place-making, being great places in which to work, live, shop, recreate, or just visit and be within. In doing so they would accommodate a share of the modest amount of growth that is anticipated and planned for by the City, as outlined elsewhere in this *Comprehensive Plan*. Doing so would help avoid growth straining the scale and ambiance of existing centers and without overburdening the capacity of the locations where these new centers are to be developed. They would further benefit the City by adding both jobs and fiscal support. Careful guidance should assure that the interests of the vicinities within which they are sited are given careful consideration regarding the location, programming, and design of these new centers.

2. STRATEGY

To achieve that vision the City needs an approach that makes the creation of such integrated mixed-use centers not only possible, which they are today (with the first such currently undergoing review), but also attractive to both those who might propose them and those impacted by them. Mixed-use development on appropriate sites needs to be made more appealing to those doing development than would be the more usual separations among business, residential, and civic development. Since no feasible wholly vacant site for such use appears to exist anywhere in the City, such development also has to be more attractive than continuing existing under-utilization of already developed land. Finally, such mixed-use development should be responsive to what the City seeks rather than, as has too often been true, having the City revise its plans to accommodate those of developers.

To achieve that, the City needs a decision-making structure that provides advance clarity of intentions, sensible guidance, and reasonable regulatory and financial requirements. For those planning development, the approach should facilitate prompt decisions and provide predictability about what will or will not be likely to gain approval. For people in nearby neighborhoods the approach should provide predictability about the limits to potential impacts of development and a well-defined role in the process of managing it, going beyond the minimum requirements for public voice as stipulated in statutory law.

An important step in satisfying those conditions will be the adoption of this element of the *Comprehensive Plan*. Another will be the adoption of zoning revisions that will address the now-evident obstacles to usage of our existing PMBD mixed-use regulations. Still another important step will be the structuring of a review process that supports collaborative evaluation

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in a process involving both City and applicant-supported professionals and community citizens seeking a shared understanding of impacts early in the planning process.

The reality of having two new mixed-use developments currently being proposed strongly colors the timing and strategic approach for the preparation of this Element of the *Comprehensive Plan* and of the implementing steps that it calls for. In light of that, this sequence of efforts is needed.

- As we have been doing in recent months, people from a broad variety of perspectives need to be engaged in shaping an image of what good mixed-use development for Newton would be, and what the essentials of a good process for achieving that would be. That effort was begun during the preparation of this element, and should continue through all of the steps to follow.
- This Mixed-Use Centers Element for the *Comprehensive Plan* needs to be adopted, which will formally evidence that the element appropriately reflects City intentions.
- The basic regulatory measures necessary for implementing the *Plan's* intentions need to be adopted. Doing so will give further evidence of the City's intentions, and will provide the basic regulations needed to better guide this form of development.
- The tools and procedures for a collaborative input and review process need to be put in place, assuring a well-structured and well-informed voice for both neighborhoods and Citywide interests to assist in enabling those proposing development and for the City officials and staff to give shape to developments that will be rewarding from all of those perspectives. This will involve not only regulatory efforts but also developing needed analytic tools and structuring needed participatory processes.

3. DESIGNING MIXED USE

Background

Unlike new mixed-use centers, Newton's villages grew incrementally over several centuries of profound change and at the hands of many actors. Despite those and other differences between then and now, locating, programming, and designing new mixed use would do well to learn from our existing village centers. One lesson is that while the full set of villages serves us well, those centers are highly individual. No tight template governing their development would have produced as good an outcome as has some invisible hand that has allowed broad variations. However, the set of village places does have some powerful consistencies, and those are critical to their success. In guiding development of new mixed use, we shouldn't be overly prescriptive about how development should be shaped, but should be firm about assuring consistency with those qualities that have historically proven critical to success in Newton's development.

These are important among them.

- Each village center is made up of a mix of uses, not simply one dominant one.

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- The uses are not segregated from each other but rather are mixed at fine grain.
- They are easy to move within and among on foot.
- To a greater or lesser extent, the uses are interrelated, to some degree serving or depending on each other; so that the adjacencies and integration are not just symbolic, they are functional.
- It is usually hard to define where the village center ends: the zoning map came too late to dictate otherwise. To successfully replicate that kind of “soft” transition from center to surroundings is challenging, but critically important in the long term.

Guidance

The lessons from our existing villages are clear. The design intention for mixed-use development should be to create positive, even integrating, relationships with the surrounding context, not buffering the new from the existing, unless dictated otherwise by unusual circumstances. Functional and visual integration of uses within the development is critical for supporting vitality. Shared places or spaces or both are critical to that intention, which suggests new buildings oriented to both new and existing streets they share with others, not turning their backs on them, or alternatively using some other means, such as shared common connected outdoor spaces, to accomplish comparable integration.

The vitality sought can be achieved only given a true sharing of place among dwellings and businesses, and having at least some businesses that provide nearby residents with jobs or services or other benefits. Connections by both street and pedestrian pathways are critical to accomplishing that. There should be both precedent and flexibility regarding the categories of use that are part of the mix, and there should be flexibility for the location of those uses within the center regardless of the configuration of the underlying zoning districts in order to achieve the overall design intent.

Truly vibrant mixed-use centers typically involve not only a mix of commercial and residential uses but also include a significant public amenity that helps in the creation of a sense of place. They typically are co-located at an accessible public transportation node. It is important both functionally and symbolically for the pathway from residences to public transportation to be an easy and pleasurable one.

Mixed-use development absent one or more of the above qualities is certainly possible, but lacking them would make it more difficult to achieve the kind of outcome that is being sought, so would require some offsetting contributions through programming, design or location.

The shaping of buildings and spaces so as to achieve the goals being sought should be guided by an insistence upon consistency of outcomes with intentions such as the following, to which the complex tables of numerical rules would be made secondary.

- The shaping of buildings and spaces should be respectful of and compatible with the context within which the development is to be located, ideally conveying an image of

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having an organic consistency with its environs without mimicry or preclusion of well-designed differences in massing and scale.

- For example, exceeding the height of the highest nearby buildings might be allowed, but only upon finding that any shadow effects, view blockage, or departure from established precedents would not be a damaging intrusion, and evidence that the increased height would enable a superior organization of buildings and open spaces, benefitting the overall design.
 - Similarly, the acceptable amount of bulk will depend in part on the visual impact of that bulk. A skillful massing design can make a relatively high level of bulk preferable visually to a smaller but less suitably configured amount of bulk.
 - In addition, there are other considerations in assessing the acceptable amount of bulk, importantly including the ability of the public infrastructure to support the functional demands associated with bulk and the activities it supports, such as traffic, for which metrics for what is “acceptable” should be defined. By managing bulk in this way, for example, efforts towards reducing dependence on single-occupant auto travel would be rewarded with proportionately lightened bulk limits if traffic were the limiting bulk consideration.
- The configuration of buildings and landscaping should create positive outdoor spaces, contributing to the quality of the experience of visiting the place, and not just be vegetated (open space) leftovers between buildings.
 - Respect for the environment that goes beyond minimally satisfying land use and environmental requirements is expected as a part of achieving contextual integration.
 - Roofscapes should be made into positive assets through their design and forms of usage, providing functional benefits (e.g. solar energy conversion, recreation) as well as visual interest and attractiveness as seen from buildings within and neighboring the development.
 - Creative use should be made of the potential of vertically mixed uses in considering the distribution of uses within and beyond the development.
 - Good-faith efforts should be made both during, and subsequent to, development to enhance the extent to which the entire center benefits Newton residents through targeted employee recruitment efforts, training or apprenticeship opportunities, or similar initiatives.

Other design considerations are articulated in the access, housing, and finance sections.

Actions

- Make efforts to develop guidance more concrete than included here to provide a basis for judging the appropriateness of new development, carefully reflecting the reality that Newton

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isn't, say, Williamsburg. A cherished quality of the City is that "appropriateness" varies sharply among the villages and other sub-areas of the City. The outcome might be a set of design guidelines such as are commonly developed for communities or neighborhoods.

Even better, the guidance might include modeling that uses measurable metrics for determining early if a proposal, after considering its location, site size, building size, mix of uses and design, is likely to be appropriate. Having such metrics can reduce arbitrariness and increase predictability, much as is done with great complexity by LEED, which dares to be prescriptive and measurable about this topic for the whole of the United States. Much the same was done with great simplicity by the point system in the *Santa Fe Architectural Design Review Handbook* (1988) prepared by Santa Fe architects and planners for a community thought to be visually homogenous only by those who don't know it well. Less exceptional descendants of such work also exist (e.g. "Workbook for Successful Redevelopment," Naperville, IL, 2002).

- Where the above guidance appears appropriately applicable for development other than large-scale mixed-use centers, that guidance should be incorporated into either Newton's Zoning or some other enforceable guidance to be adopted by the Board of Aldermen.

4. ACCESS AND TRANSPORTATION

Background

The Transportation and Mobility element of the *Comprehensive Plan* makes clear a planning intention that is important to planning for mixed-use development centers since they are inherently well-suited to help in meeting the cited objective.

"We want to assure that the design of new development is well-related to the transportation system that the City intends, rather than development dictating what that system must be, just as fully as we want the design of the transportation system to be well-related to the development that the City intends, rather than serving only the City as it exists or as predicted rather than intended."

Guidance

By locating a mix of uses within a compact area some trips that otherwise would be made in autos can be made on foot. By concentrating a substantial amount of development, mixed-use centers also concentrate potential trip ends, improving the feasibility of alternatives to single-occupant auto trips, ranging anywhere from car pooling to rail transit, even enhancing the feasibility of shuttle bus connections. Bicycle access and pedestrian access both between uses within the development and between those uses and ones in the off-site areas around them can substantially reduce the share of trips made by auto if alternative means of access are made easy, safe and pleasant. No mixed-use center should fail to make those efforts.

The mix of uses within the development can within limits be managed to reduce the amount of traffic generated. Trip generation in relation to building floor area varies widely between residential

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on the low end to retail on the high end. Including more housing and less retailing means fewer trips from the same amount of floor area. Further efforts at trip and parking demand management become feasible where mixed-use centers have an over-arching management structure. Car-pooling, company parking protocols and vans, incentives for employee and others to use public transportation, all can contribute to auto trip reduction.

Finally, development at a relatively high density creates enough value to enable some level of mitigation of the traffic impacts that it causes. That mitigation will be welcomed by neighbors and others when it facilitates provision or enhancement of public transportation, removal of existing safety concerns or traffic flow impediments, or skillful traffic engineering at intersections, which often can greatly improve traffic movement with little physical change. However, choices get harder when the scale, mix of uses, and feasible alternative mode and demand management efforts are inadequate to offset trip volumes projected from the development.

The way the City addresses those hard choices should be no different for mixed-use development than for single-use development. The location, programming, design, and management of all major developments and the access provisions related to them should be guided so that conjunctively they essentially cause no harm, meaning among other things that the ease of travel by persons of all abilities regardless of mode is not materially worsened as a result of the development and its related "mitigations," and the means of achieving that do not do damage to community or environmental values, thereby damaging the qualities of the City that we want. We don't want quiet residential streets to be turned into major arteries, even if doing so allows traffic to flow more easily than before, any more than we want to see accessibility for pedestrians or bicyclists damaged in order to facilitate auto travel. Whether or not at the expense of the developer, we don't want to have to accept new concrete sound barriers to block new traffic noise in order to accommodate a major new development.¹

There are measurable "warning flags" that could alert both City officials and developers that such unacceptable circumstances may potentially be involved, despite all of the design and programming skill provided up to that point. The percentage of increase in traffic which a new development is likely to place on any street, whether a lane or an expressway, is an indicator of the likelihood that avoiding travel deterioration will entail street alterations which could be damaging to the nearby quality of life. Where a proposal crosses that threshold of concern, special attention and resolution of any concerns should be called for, possibly entailing project programming revision, additional transportation management efforts, skilled design of the street alterations so that on balance they are acceptable, or through reduction in the proposed scale of the development. Testing for such flags can be done simply and inexpensively early in the design process, saving missteps.

Certain access efforts are particularly critical for large scale mixed-use developments because of their scale, mix of uses, and the importance of their being integrated with their surroundings. These are examples

¹ The principles behind these intentions are drawn from ones advocated nationally by two organizations: "Complete Streets" whose website is www.completestreets.org and "Context Sensitive Solutions," whose website is www.contextsensitivesolutions.org.

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- 1) Mixed-use developments should have excellent pedestrian and bicycle connections both among different uses within the site and between those uses and the surrounding environs. The new developments should be permeable through interconnections to adjacent developments, wherever possible both by foot and by auto. Visible and adequate bicycle storage areas, and appropriate changing locations with showers for office users, will help support the use of bicycles for commuting.
- 2) The visual and environmental impacts of surface parking should be mitigated and pedestrian accessibility enhanced through locating and designing parking facilities with that in mind, not obliging pedestrians to cross open parking lots in order to reach their destinations.
- 3) Where feasible, accommodate parking in structures, but use surface parking where it can be positive, such as in buffering pedestrians from moving traffic.
- 4) Wherever possible the visual impact of parking facilities should be mitigated with intervening retail or other uses, unless those facilities are of rare design quality themselves².

Actions

- Expand on the contents of the City's street functional classification system in order to make it more useful. Currently it is only a listing of the street segments that are included under each of six categories. Added to that should be information regarding the street design and usage that are appropriate for that category of streets. That would provide important policy guidance in assessing the appropriateness of street modifications that might be proposed in relation to large-scale development.
- Complement the street functional classification system by adopting a design type classification, as proposed in the "Transportation and Mobility" element of this *Plan*. The *Plan* shows six design categories ranging from Regional Center Roads to Parkways. Just as with the functional classification, this classification should include information about what is or is not appropriate change to the road for consistency with each design type. Having done that would provide predictability for those contemplating large scale developments that might entail street changes, and would be of great value in evaluating such proposals regarding the consistency of project-proposed street alterations with the City's intentions for the design and character of any affected roads.
- Develop an in-City capacity for early collaborative concept-level estimation of the access and traffic impacts of major developments, better than back of envelope, but quicker and less demanding than the sophisticated studies that would continue to be the basis for final design and approval actions. That capacity would enable an important aspect of the collaborative input and review approach described in the Vision above, engaging City officials and staff, the applicants, and community residents.

² See Paul Goldberger, The Sky Line, "Wheelhouse," *New Yorker*, August 9, 2010, describing an example in Miami Beach designed by Herzog & deMeuron.

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- Develop an initial version of the “red flag” system suggested above to provide guidance to both those designing developments and those reviewing them regarding when traffic impacts threaten to result in unacceptable impacts as a consequence of either excessive congestion and disturbance or community and environmental damage to the environs. This would draw upon the above impact estimation. After some experience that system might be further refined and made an integral part of the City’s decision-making system.
- If feasible, integrate this “red flag” system with the parallel one being suggested regarding design and the “acceptable amount of bulk.”
- At the point at which it appears that Massachusetts law would allow it (such as authorization for local municipalities to create general development impact fees), explore creation of a transportation mitigation fund, which among other things would allow traffic mitigation resources to be used for any of a broad range of mitigating actions, not just ones related to road and traffic engineering alterations.

5. HOUSING IN MIXED USE

Background

The inclusion of residences in mixed-use developments has at least three important benefits for Newton. First, if well located, programmed, and designed such a mix of uses can enable new development to enhance our existing community rather than needing to be buffered from it. Such real mixed use can provide wonderfully vital places in which to shop, work, live, or all three, and can help make the development a welcome asset for the neighborhood.

Second, the increasing success of the mixed-use model makes it a valuable means of serving part of the housing needs of the City and the region. The housing in mixed-use developments is almost certain to chiefly serve young households and senior citizens, neither of which is well served by Newton’s existing dominantly large-dwelling housing stock.

Third, incorporation of dwellings in the development can make the spatial transitions between the development and any adjoining or nearby residential uses a less disruptive one than otherwise, enabling the new uses at those edges to be as compatible as possible with the existing neighborhood.

The benefits of including housing in large-scale centers is widely understood, but so too are the challenges to achieving that. Among them is the complex volatility of real estate markets, with housing, shopping, workplace and entertainment markets seldom moving in smooth unison, raising the challenge of how to achieve integration of those uses to produce the sought-after vibrancy when markets may make it nearly impossible at times to simultaneously develop all of them. That is one of the key issues dealt with below.

Guidance

Housing either within or adjacent and integrated with major centers can provide a kind of vitality and fruitful contributions to the creation of wonderful places and an improved quality of life that

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centers without such housing may not be able to achieve. The presence of housing within the development impacts considerations for location and design. Accordingly, the process being developed for City review and approval of proposals for mixed-use centers reflects having that mix, and all of the following presumes that full rich mix.

The housing within the development should have a clear identity as an important and distinct element, not being simply an after-thought or rule-satisfier. A small number of dwelling units surrounded by business uses and its parking makes it difficult to achieve that which is sought. Housing to be developed as a part of a mixed-use development must be sufficient in scale so that together with possible existing adjacent residential uses it can result in a real neighborhood being created, rather than the housing being an isolated residential fragment in a non-supportive, potentially even hostile, non-residential context. For that reason, it is important for the regulations guiding such development to have clear and explicit guidance on what is to constitute a sufficient housing component while also recognizing that the changing demands of the commercial real estate market may favor specific uses (i.e. retail, office, housing, and hotel) and not others in various market cycles.

Housing that already exists nearby can importantly contribute to the vitality and exchange that is sought, but achieving that would require skillful design of how the new buildings and uses relate to the existing ones as well as program efforts. Those might include enabling nearby residents to have easy access to the services being provided on-site, assuring that those services are appropriate to the neighbors, as well as to others, and if programmatically provided for, enabling neighbors to gain benefits from both open space and parking.

Given such measures, neighboring off-site units might be considered to be part of the development in determining the allowable scale of non-residential presence as discussed above, where there is evidence that the owners and residents of that adjacent housing have indicated their willing agreement with that inclusion.

Including adjacent residences within the programming concept and "counting" is one means of recognizing market uncertainties inhibiting simultaneous residential and non-residential development. Additionally, any required minimum residential component might be programmed to be provided at a different time than other uses in order to reflect market conditions, but only if there are offsetting benefits that compensate for the delay and also enforceable assurances that the mandated ratio will in fact be attained within a reasonable period of time.

It is important that housing commitments be firmly guided regarding type, location, design and timing of construction in order to produce the kind of vitality and great places being sought. Housing provisions should reflect both the populations appropriately served at that place and time and the amenities in that environment, chosen following discussion with related City officials and housing-related organizations.

Parking demand created by mixed-use developments will reflect the mix of activities, proximity to public transportation, and project-wide demand management efforts. Those considerations may substantially change parking demand, thereby justifying departure from the usual rules of Newton's parking standards when substantiated by, among other things, recent experience in this and surrounding communities with similar developments.

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Compliance with the usual rules for regulating business activity conducted in a dwelling should not be required, although alternative controls to assure an appropriate ambiance for family living should apply. Such development might even allow "live/work" units combining both living and working space with the spatial allocation between them subject to change over time.

Open space is essential, including some amount reasonably located for use exclusively by residents and their guests. Unusual but tried ways of providing open space such as green terraces and roofs may help in meeting this need.

It is important that the type of housing being produced within the City helps to address needs not being well-served by the existing stock of housing, and unless direction is provided, the housing being produced also may not well serve those needs. A current example is the need for housing suitable for seniors at most income levels seeking to down-size or, sometimes, upsize their accommodations.

Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the impacts of the housing upon the adequacy of each of the affected school facilities that are likely to accommodate its enrollment impacts.

6. FINANCE AND MIXED USE**Background**

New mixed-use centers clearly can bring substantial amounts of new revenue and new jobs to the City, but too commonly what is claimed and discussed is gross impacts on revenue and jobs, not the net impact after taking into consideration second-order impacts. Those second-order impacts are more difficult to estimate than the gross impacts, but they deserve attention anyhow, since they are often very large, and considering them may substantially change perceptions about development proposal benefits, for better or worse.

Taxes perhaps best illustrate the point. New development brings new tax revenues, but it also brings new service demands. Those costs in some cases can turn what seemed to be a fiscal asset into a fiscal liability. If a new retail development chiefly serves Newton then it likely competes with businesses already here, so that its NET impacts on taxes may well be substantially lower than its gross impacts. On the other hand, the opposite could be true. Some businesses, even local ones, can attract other businesses or support existing ones with their purchases, resulting in those other businesses prospering and expanding, resulting in larger fiscal impacts than just those of their own properties. Similar second order impacts deserve attention when considering jobs, traffic, and other impacts.

The benefits of fiscal gain are readily understood, in part because they are so clearly local. Property taxes generated in Newton go to the City of Newton and benefit its residents. The benefits of gaining jobs are less self-evident, in part because in a metropolitan area they are seen

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as regional. New jobs located in Newton will largely be held by non-residents of Newton, and workers resident in Newton largely hold jobs not in Newton but elsewhere within the metropolitan area. However, there are a number of good reasons for caring about bringing jobs to Newton, aside from the tax support they bring with them.

First, bringing jobs to Newton to some extent means more jobs for the region and for Massachusetts, and that is good for everyone. Second, the City is expected to grow somewhat in population over the years, and there will be benefits if the current balance of the number of jobs held by Newton residents and the number of Newton residents who hold jobs can be maintained. Such "balance" is a widely sought goal. Newton has it, and has had it, more or less, for decades. Losing that balance would mean more commuter traffic and more dependence on other places.

Three mixed-use centers have recently been discussed within Newton, totaling perhaps 1.5 million square feet of non-residential floor area and about 600 dwelling units, one (Chestnut Hill Square) is currently under review. The total amount of business floor area among the three is sufficient to accommodate nearly 4,000 jobs, an 8% addition to the current total of jobs in Newton, while that amount of housing would be a 2% increase in the Citywide total. Together their tax payments ("New Growth" in Prop 2½ terms) at current rates would be about \$13 million, about a 7% increase in the annual City-wide tax levy allowed under Prop 2½. Those amounts of growth are not inconsistent with the expectations and projections for growth made in the Newton *Comprehensive Plan*. As noted above, net figures will change after considering economic "multipliers" and accounting for unavoidable new expenses and "shifting" rather than "creating" jobs and housing, but despite that the above figures provide a helpful background.

Guidance

It is well-understood that business development in Newton pays in taxes and fees substantially more than it costs the municipality to serve it, offsetting the reality that on average taxes and fees paid by residents are somewhat lower than the costs of municipal services for them. What happens to the fiscal balance when mixed-use development combines both business and residences?

The market for housing in mixed-use centers will unquestionably be largely at opposite ends of the adult life cycle, young couples and empty-nesters. Data from the Newton School Department make clear that the ratio of enrolled pupils to dwelling units is far lower in multi-family dwellings than in single-family ones. Reflecting that, analyses make it clear that on average the tax revenues and tax-supported costs for dwelling units in multifamily developments, including those units whose values and legitimate tax payments are restricted to a below-market level, are almost equal, if anything providing a small positive balance to the overall tax impact. That means that the fiscal impact of mixed-use developments is almost independent of the number of dwelling units they contain, but rather chiefly reflects the favorable balance resulting from the well-understood positive impacts of business development. Importantly, that means that choosing the amount of housing to include in such developments can be considered independent of concern over fiscal impacts.

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- Clarify and document the City's requirements regarding development-related impact fees and exactions.

By paying taxes new development supports City costs, including those associated with the facilities and services for which it creates need. When that need is quite location-specific, it is common to have the development causing the cost bear at least part of it through absorbing public improvement costs, monetary contribution, or some other form of contribution. Current Massachusetts law is not generous in allowing for impact fees or exactions. Statutory authorizations for such treatment are few and narrow, and the courts view of constitutionality has been sharply restrictive. Despite that, some Massachusetts municipalities have home rule legislation authorizing significant charges to be made. Newton's current practices in that regard result in quite substantial efforts by developers to, in effect, restore net capacity of certain infrastructure to what it was without that development. The Commonwealth does the same through the MEPA process for certain costs, importantly highway transportation. However some cost generators, notably school impacts, have not been treated in that way. In short, Newton could do more, but only within limits.

However, there is no apparent rationale for charging fees to mitigate impacts for mixed-use developments but not for single-use developments having equal or larger impacts. Doing so could create a disincentive for developers to propose development under the mixed-use regulations being advocated. If City intent is to establish this type of policy, any impact fee requirements should be addressed as applying to ALL new development, and not uniquely to mixed-use development.

Quite apart from what the City does or does not do about mixed-use development, the City should set out clear and reasonable expectations about the fiscal mitigation it expects *before* it considers large developments. Whether these are transportation or other fiscal impacts, developers should be able to know--in advance-- how our community expects new development to deal with the impacts it creates and what mitigation is reasonable. One by one, *ad hoc* negotiation may not be efficient or equitable for either the City or developers. While it is recognized that new development impact identification often results during the special permit process, we should at least document our expectations in one place so that developers know how to translate our values into project costs without surprise, and so that community residents can know what can or cannot equitably be asked of new development.

- Develop modeling and procedures to facilitate early collaborative City/developer/community projections of the fiscal impacts of the proposed development upon the City.

Fiscal consequences are properly a significant consideration regarding major development, whether mixed use or not. Models for producing projections of such impacts are commonplace, but they almost all share the quality of producing projections that lack credibility among those who don't like what they hear unless those persons themselves were a part of producing the projections. Newton should create a system which gives all parties a hand in the analysis, sharing the effort, and hopefully sharing confidence in the outcome. The City

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should specify the scoping requirements, prepare the mathematical/metric models to be used, and assist but not dominate the execution. The developers and interested community members would help in utilization of the modeling by gathering information and critiquing its use. Doing the job that way is more difficult than hiring a consultant to write a report, but is far more valuable for the decision-making process.

Note that this step would serve to integrate other collaborative efforts that have been called for above, including traffic analyses, school impact analyses, and others.

- Make efforts to use mixed-use development as a means of improving the local job-gaining likelihood of persons for whom our housing efforts are trying to make Newton a welcoming community.

If resources for doing so can be found, such an effort would be highly supportive of the policy intent of supporting socio-economic diversity in Newton which now is being implemented almost exclusively through support for below-market housing.

7. MIXED-USE GUIDANCE PROCESS

Background

Mixed-use developments can be created under the City's existing zoning, as is currently proposed at Chestnut Hill Square, and there is every reason to hope that upon their completion such developments will be of benefit for the City. This amendment to the *Newton Comprehensive Plan* makes the City's intentions about such developments clearer, intended to encourage creation of such developments and to guide both applicants and those responding to their proposals.

However, resting on existing rules and the *Comprehensive Plan* alone would for mixed-use developments fall short of what can be accomplished using the process refinements suggested in this Element of the *Plan*. The likelihood of developers choosing mixed-use development and the City gaining the benefits of it will be greatly enhanced by the City taking actions to improve both the regulatory framework for such development and the context for how City agencies and staff, those doing development, affected neighborhoods and other affected interests relate to each other in the consideration and approval of such proposals.

Guidance and Actions

- Develop modeling and procedures to facilitate early collaborative City/developer/community efforts to create objective projections of the likely impacts of large-scale development upon the vicinity and the City at large.

Action proposals for doing this are included above in the Design discussion regarding impacts upon neighborhood character and the environment; in the Access and Transportation discussion about traffic and the "red flags" it might raise; in the Housing discussion about impact upon schools; and in the Finance portion regarding fiscal impacts. Each of those

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subjects has been part of the debate regarding each of the three mixed-use developments that have been proposed. The only one of those topics that has had the benefit of publicly-discussed analytics to inform the decisions has been traffic.

Well-informed dialog about traffic has largely involved consultants to the developer, City staff, consultants to the City, and MassDOT engineers. Not surprisingly, given how “black box” that dialog has been, the results have often not been persuasive for many of the parties that have been concerned about such developments. There often may be no public agreement even on the scale of traffic impacts, let alone agreement on appropriate mitigations.

Beyond traffic, there has been discussion and assertions on the other topics, but no real public dialog supported by credible analyses. The debate about project approvals in some cases has lacked agreed-upon estimates of even the range within which important impacts are likely to fall.

Newton City government is rich in data, both historic and current. The City is rich among its population as well as among its (busy) staff in expertise on how to utilize those data resources to produce helpful estimates and projections. So, too, are the developers of major projects and their consultants. What would be helpful would be to organize a way of using all of those resources in a well-structured way early in the evolution of development proposals. That could support informed understanding of what can be agreed upon regarding the range within which impacts of development are likely to lie, not only for traffic but also for a range of equally important topics in other areas of concern: design, schools, and taxes; and not only agreement among technicians, but also including members of the public.

Doing that would give new value to the data that the City carefully collects, and if skillfully managed might go far towards reducing conflict in the shaping of new development, ultimately reducing costs for all parties, and reducing the time needed to reach decisions.

- Adopt amendments to the existing zoning that will improve the process for approval of such developments so that they can work better for applicants, for the affected vicinities and interests, and for the City.

There now is a body of experience in Newton that helps to identify where changes would be of value. When the Northland proposal was active, the developer asked for changes to PMBD to fit their development on Needham Street, and those zoning requests were given a formal public hearing prior to the withdrawal of the project. BH-Normandy has suggested a different set of revisions for its proposed development at Riverside. Each sought different changes to the height and setback regulations, land use rules, open space rules, and parking or loading rules, as well as individually seeking other departures, as well.

The need for project-specific relief in each of these cases is no surprise, given the large scale of the developments proposed, and the history of the City’s regulatory processes, in which zoning rules and action on special permits relying on such change are often taken in tandem. It is perfectly reasonable for Aldermen to want to have a specific example of what a regulatory change would entail before adopting it. That is how the B-4 district and many other provisions have been created or revised.

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It is critically important to structure such change processes so as to avoid overburdening the Zoning Ordinance with a steadily expanding set of project-specific departures. At least equally important, we should have a structure that provides advance clarity about what changes may appropriately be made to reflect project-specific considerations, and which ought to be universally applicable, to be relied upon under all circumstances.

Given that in the past two years three such large-scale mixed-use developments have been proposed in Newton, and a number of others in nearby communities, it is important for the City to put those major changes into place in the near future. Clearly the best way to accomplish that would be through a carefully prepared set of revisions to the existing Planned Mixed Business Development (PMBD) zoning, leaving for some future effort those features requiring longer consideration.

- Consider the potential applicability of much of the guidance of this element for developments that are smaller in scale than the very large ones for which this material has been developed, and for our existing village centers in which the mix of uses is on separate lots developed not at once but rather over many decades.

Good regulation for large-scale mixed residential/commercial developments will contain a number of provisions that would be inappropriate in those other contexts, most obviously the insistence upon integration of a residential presence, as well as a number of other provisions that flow from that. However, many of the provisions in this Element would be perfectly appropriate in many other contexts. Where applicable, the potential benefits of this effort for those other kinds of circumstances deserve to be pursued.

Draft Element 4.doc

26-11



NEWTON MAYOR'S MIXED USE TASK FORCE

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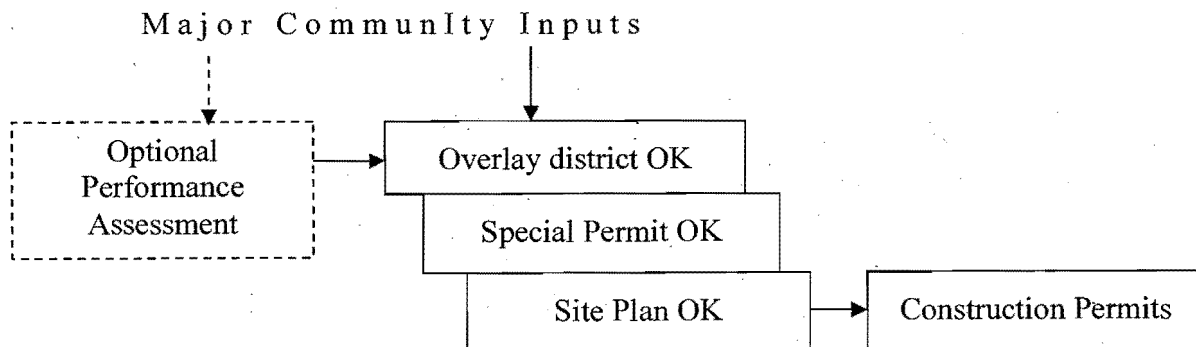
ILLUSTRATIVE PERFORMANCE-BASED PMBD

October 7, 2010

On the pages following this introduction is a draft set of zoning amendments illustrating a possible first step towards implementing the concepts and approaches outlined in draft Mixed Use element for the *Comprehensive Plan*. The basic intent of the amendment is to implement the draft Mixed Use Element as simply as possible, while effectively addressing the substantive concerns identified in that draft. This draft builds onto the investment made in having crafted the current PMBD provisions, integrating into it early collaborative impact assessment to promote constructive dialog among the interested parties and to help in implementing an approach relying more on how projects in specific contexts perform and less on static specifications. The amendment is structured to avoid overloading the Ordinance with an accumulation of project-specific amendments, and to make its prompt adoption as likely as is possible in order for it to be timely in relation to future development potentials.

The draft material involves seven revisions or additions. Five of them (B,C,D,F,G) are modest revisions to the existing Zoning Ordinance. Each of them stands alone, without altering the basic PMBD approach, each seeking to resolve a concern that has been raised. The other two (A and E) are dependent upon each other, and suggest a more substantial set of changes in the PMBD provisions, but they remain within the PMBD framework. If all of these revisions were to be adopted after further review and refinement then the most important intentions of the Draft *Plan* amendment would have been put into place. There remains more that could be proposed as possible further enhancements, or even for inclusion in this set, but the following appears to be a good place at which to begin.

COLLABORATIVE PERFORMANCE-BASED PMBD PROCESS



A EXPANDING §30-15(s) *Planned Multi-Business Developments*

This alerts readers that there is an optional alternative set of provisions coming later.

B. REFINING §30-15(s)1 Purpose

This adds to the text a few words such as “transit nodes” and “economic growth” that have been suggested during this process.

C. AMENDING 30-15(s)(2)(a) re qualifying PMBD locations

This amendment does three new things. It indicates that PMBDs may happen only within Overlay Districts, which is an important refinement related to the statutory requirement (MGL CH. 40A §4) that rules must be consistent throughout any district.

D. AMENDING §30-15(s)(2)(d) regarding parking.

This gives the Aldermen greater discretion to allow departures from specifications, and adds references to qualified peer review(s).

E. INSERTING §30-15(s)(12) *Performance-based option*

This contains the basic provisions for the optional alternative process.

F. DEFINING “Overlay District.”

There are many popular misunderstandings of how overlay districts work, partly because depending upon local or state laws they may differ fundamentally. This simple definition started from one drafted for the Needham Street version of PMBD.

G. CLARIFYING §30-1 Definitions – *Open Space, Beneficial*

This expands on the “beneficial open space” definition so as to clearly include accessible landscaped roofs and certain other characteristics.

As now written, the optional process enables the Aldermen to allow an applicant to depart from Table A dimensional rules and the BU-4 use regulations provided that the applicant participates in and supports a pre-application “Collaborative Performance Assessment” for the site. The assessment will be guided by the Planning & Development Department and involve the applicant, the applicant’s professionals, the City’s Development Review Team, and some neighborhood folks and others selected by the Mayor after conferring with the area’s Aldermen.

The review may take up to three months to produce an Assessment of impacts on things such as access and transportation, design, school enrollment, and City finance. At least one workshop will be held, and a summary report will follow. Results are binding on no one. More detailed later studies by others are anticipated, but their focus and that of the community will have been

importantly informed by this early process. The changes give more weight to how a project performs overall, and reduced but still considerable weight to pre-stated specifications.

If developers think this option will help they may use it. If they don't they may ignore it, but should not as now expect the Aldermen to change the basic rules to facilitate what they propose.

PMBD ZONING AMENDMENTS

Following are the seven revisions to the Zoning Ordinance that comprise the illustrative set of revisions to the current PMBD Zoning. Starting on page 6 is a "red-line" version of the full PMBD text as it would be with the revisions having been made to it.

A. Amend Section 30-15(s) by inserting the following as the second paragraph thereof.

B. Amend Subsection 30-15(s)(1) Purpose to read as follows:

"(1) *Purpose:* A Planned Multi-Use Business Development is one that allows development appropriate to the site and its surroundings, provides enhancements to infrastructure, integrates with and protects nearby neighborhoods, provides a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, is compatible with the city's long-term goal of strengthening alternatives to single occupancy automobile use, and is not inconsistent with the city's *Comprehensive Plan* in effect at the time of filing an application for a Planned Multi-Use Business Development.

C. Amend Subsection 30-15(s)(2)(a) to read as follows

"(a) The Development Parcel shall be located in a Business 4 District, and have frontage on a Major Arterial, as classified by the City of Newton;

D. Amend Subsection 30-15(s)(2)(d) to read as follows

"(d) If the PMBD's mix of commercial and residential uses share parking facilities, the provisions of subsection 30-19(d) shall apply, except that in no event shall the required parking for residential units be less than 1.25 spaces per dwelling unit; and"

E. Insert the following new Subsection 30-15(s)(12):

F. Amend Section 30-1 Definitions by inserting the following at its alphabetically appropriate location:

G. Amend Subsection 30-1 definition of "Open Space, Beneficial" to read as follows.

"Open Space, Beneficial: Areas not covered by buildings or structures, which shall specifically include, but are not limited to: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) portions of walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single housing unit, or (iv) areas that are accessory to a single commercial unit, and controlled by the tenant thereof, and not made available to the general public. In calculations of the amount of beneficial open space provided, an offset of ten percent (10%) of the otherwise applicable square footage requirements shall be made for the provision of well-maintained publicly available green planted areas."

Performance PMBD.com

NEWTON ZONING ORDINANCE SECTION 30-15(s)

NEWTON ZONING ORDINANCE SECTION 30-15(s)

As in effect 8/04/2010 except amended per the above

(s) *Planned Multi-Use Business Development ("PMBD")*

In any Business 4 District, the board of aldermen may give site plan approval in accordance with the procedures provided in section 30-23, and may grant a special permit in accordance with the procedures provided in section 30-24, for the applicable density and dimensional controls set out in Table A of this section subject to the criteria for a Planned Multi-Use Business Development and further subject to the criteria and conditions set out below.

- (1) *Purpose:* A Planned Multi-Use Business Development is one that allows development appropriate to the site and its surroundings, provides enhancements to infrastructure, integrates with and protects nearby neighborhoods, provides a mix of compatible and complementary commercial and residential uses appropriate for sites located on commercial corridors, is compatible with the city's long-term goal of strengthening alternatives to single occupancy automobile use, and is not inconsistent with the city's *Comprehensive Plan* in effect at the time of filing an application for a Planned Multi-Use Business Development.
- (2) *Minimum Criteria for Planned Multi-Use Business Developments.* In order to be eligible for any approval under this section, a PMBD must meet the following threshold criteria:
 - (a) The Development Parcel shall be located in a Business 4 District, and have frontage on a Major Arterial, as classified by the City of Newton;
 - (b) The PMBD shall comply with the applicable minimum and maximum density and dimensional controls set out in Table A of this section, rather than to those of section 30-15 Table 3;
 - (c) The PMBD shall include a mix of compatible and complementary commercial and residential uses and shall comply with the provisions set forth in subsection 30-24(f);
 - (d) If the PMBD's mix of commercial and residential uses share parking facilities, the provisions of subsection 30-19(d) shall apply, except that in no event shall the required parking for residential units be less than 1.25 spaces per dwelling unit; and
 - (e) No off-street parking shall be provided in the front setback of retail, office or commercial buildings.
- (3) *Additional Special Permit Criteria for a Planned Multi-Use Business Development.* In order to make the findings set forth in subsection 30-24(d), and in addition to those criteria set forth in subsection 30-23(c)(2) and in subsection 30-24(d), the board of aldermen shall not approve a PMBD application for a special permit unless it also finds, in its judgment, that the application meets all of the following criteria:

- (a) Adequacy of public facilities. Transportation, utilities, public safety, schools including capacity, and other public facilities and infrastructure serve the PMBD appropriately and safely without material deterioration in service to other nearby locations; determination of adequacy shall include use of the traffic analysis required by subsection (10)(f) of this section.
- (b) Mitigation of neighborhood impacts. Mitigation measures have been included to address any material adverse impacts from the PMBD on nearby neighborhoods during construction and, after construction, on traffic, parking, noise, lighting, blocked views, and other impacts associated with the PMBD. Mitigations may take the form of transit improvements, improved access to transit, traffic calming, or other roadway changes;
- (c) *Housing, public transportation and parking improvements, and utility infrastructure enhancements.* The PMBD offers long-term public benefits to the city and nearby areas such as:
 - 1) Improved access and enhancements to public transportation;
 - 2) Enhancements to parking, traffic, and roadways;
 - 3) On- and off-site improvements to pedestrian and bicycle facilities, particularly as they facilitate access to the site by foot or bicycle;
 - 4) Public safety improvements;
 - 5) On-site affordable housing opportunities except where allowed in subsection 30-24(f)(5), the inclusionary zoning ordinance; and
 - 6) Water and sewer infrastructure enhancements.
- (d) Compatibility and integration with its surroundings. The PMBD scale, density, and mix of commercial and residential uses have been designed to be compatible with the character and land uses in the surrounding neighborhoods, and the PMBD is appropriately integrated with these neighborhoods in terms of building height, streetscape character, and overall PMBD design, while providing appropriate setbacks, buffering and/or screening from nearby properties, especially residential ones, as well as assurance of appropriate street- or ground-level commercial uses. The integration requirements of this paragraph shall apply to the various elements of the PMBD in relation to each other as well as to the PMBD in relation to its neighbors;
- (e) Not inconsistent with applicable local plans or general laws. The PMBD is not inconsistent with the city's Comprehensive Plan in effect at the time of filing an application for a Planned Multi-Use Business Development, and applicable general laws relating to zoning and land use;
- (f) Improved access nearby. Pedestrian and vehicular access routes and driveway widths, which shall be determined by the board of aldermen, are appropriately designed between the

PMBD and abutting parcels and streets, with consideration to streetscape continuity and an intent to avoid adverse impacts on nearby neighborhoods from such traffic and other activities generated by the PMBD as well as to improve traffic and access in nearby neighborhoods;

- (g) Enhanced open space. Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and on-site recreation opportunities is appropriate for the number of residents, employees and customers of the PMBD; and the extent of the conservation of natural features on-site, if any. In addition, the PMBD must satisfy the open space requirement in Table A;
- (h) Excellence in place-making. The PMBD provides a high quality architectural design so as to enhance the visual and civic quality of the site and the overall experience for residents of and visitors to both the PMBD and its surroundings;
- (i) Comprehensive signage program. All signage for a PMBD shall be in accordance with a comprehensive signage program developed by the applicant and approved by the board of aldermen, which shall control for all purposes and shall not be inconsistent with the architectural quality of the PMBD or character of the streetscape;
- (j) Pedestrian scale. The PMBD provides building footprints and articulations appropriately scaled to encourage outdoor pedestrian circulation; features buildings with appropriately spaced street-level windows and entrances; includes appropriate provisions for crossing all driveway entrances and internal roadways; and allows pedestrian access appropriately placed to encourage walking to and through the Development Parcel;
- (k) Public Space. The PMBD creates public spaces as pedestrian oriented destinations that accommodate a variety of uses and promote a vibrant street life making connections to the surrounding neighborhood, as well as to the commercial and residential components of the PMBD, to other commercial activity, and to each other;
- (l) Sustainable Design. The PMBD will at least meet the energy and sustainability provisions of zoning subsections 30-24(d)(5), 30-24(g), and 30-23(c)(2)(h);
- (m) Pedestrian and Neighborhood Considerations. If the PMBD project proposes any measures such as the measures listed below, and if such measures, singly or in combination, create a substantial negative impact on pedestrians or surrounding neighborhoods, the applicant has proposed feasible mitigation measures to eliminate such substantial negative impact;
 - 1) Widening or addition of roadway travel or turning lanes or conversion of on-street parking to travel lanes;
 - 2) Removal of pedestrian crossings, bicycle lanes, or roadway shoulder;
 - 3) Traffic signal additions or alterations; and
 - 4) Relocation or alterations to public transport access points;

- (4) *Lots.* In the application of the requirements of this section to a Planned Multi-Use Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot, whether or not the Development Parcel is in single- or multiple-ownership; provided, however, that violation of this section by an owner or occupant of a single lot or ownership unit or leased premises within a PMBD shall not be deemed to be a violation by any other owner or occupant within the PMBD provided there exists an appropriate organization of owners as described in subsection (5) below.
- (5) *Organization of Owners.* Prior to exercise of a special permit granted under this section, there shall be formed an organization of all owners of land within the development with the authority and obligation to act on their behalf in contact with the city or its representatives. Such organization shall serve as the liaison between the city and any lot owner, lessee, or licensee within the PMBD which may be in violation of the city's ordinance and shall be the primary contact for the city in connection with any dispute regarding violations of this section and, in addition to any joint and several liability of individual owners, shall have legal responsibility for the PMBD's compliance with the terms of its special permit and site plan approval granted hereunder and with this section. In addition, the special permit shall provide for the establishment of an advisory council consisting of representatives of the neighborhoods and this organization to assure continued compatibility of the uses within the PMBD and its neighbors during and after construction.
- (6) *Phasing.* Any development within a Planned Multi-Use Business Development may be built in multiple phases over a period of time, in accordance with the terms of the special permit granted provided that all improvements and enhancements to public transit or public roadways and other amenities are provided contemporaneously with or in advance of occupancy permits for elements of the development that are reliant upon those improvements for access adequacy. The phasing schedule for the PMBD shall be as set forth in the special permit.
- (7) *Post-Construction Traffic Study.* A PMBD special permit granted shall provide for monitoring to determine consistency between the projected and actually experienced number of daily and hourly vehicle trips to and from the site and their distribution among points of access to the PMBD. The special permit shall require a bond or other security satisfactory to the city traffic engineer and director of planning and development, in an amount approved by the board of aldermen in acting on the special permit, to secure performance as specified below:
 - (a) Monitoring of vehicle trips for this purpose shall begin not earlier than twelve months following the granting of the final certificate of occupancy, and shall continue periodically over the following twelve months. Measurements shall be made at all driveway accesses to the PMBD.
 - (b) The experienced actual number of weekday and Saturday peak hour and weekday daily vehicle trips to and from the PMBD at each driveway into the PMBD shall be measured by a traffic engineering firm retained by the city and paid for the applicant or successor in interest.

- (c) If the actually experienced total number of vehicle trips to and from the PMBD measured per subsection (7)(b) above summed over all points of access exceeds the weekday evening Adjusted Volume projected per subsection (10)(f)iii by more than ten percent (10%), mitigation measures are required. Within six months of notification to do so, the then owner of the PMBD site shall begin mitigation measures in order to reduce the trip generation to one hundred ten percent (110%) or less of the Adjusted Volume, such reduction to be achieved within twelve months after the mitigation is begun. Prior to implementation, any mitigation efforts must be approved by the city traffic engineer and the director of planning and development.

Upon failure by the owner to achieve the required reduction within one year after notification, the bond or other security cited above may be forfeited and proceeds used by the city for traffic mitigation.

- (8) *Modifications.* Any material modification to a PMBD shall require an amendment to the site plan or special permit as approved by the board of aldermen in accordance with sections 30-23 or 30-24. In addition to any other material modifications which might require an amendment, the following shall be considered material modifications:
 - (a) A change of use to a use not approved in the special permit; or change to an approved use within the PMBD if the total Gross Floor Area within the PMBD devoted to such use would be increased by more than five percent (5%) in the aggregate;
 - (b) A change of use that results in a net increase in required parking for the PMBD (pursuant to section 30-19);
 - (c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PMBD unless the applicant demonstrates that the total traffic generation of the PMBD, with the proposed change, will not exceed the total traffic generation of the PMBD set forth in the applicant's pre-development traffic study;
 - (d) Except as provided above, any reduction in beneficial open space; and
 - (e) Modification governed by any condition identified by the board of aldermen in the special permit as not subject to modification without additional approval.
- (9) *Applicability.* Buildings, structures, lots and uses within or associated with a PMBD shall be governed by the applicable regulations for the Business 4 District, except as modified by the provisions of this section. Where provisions of this section conflict or are inconsistent with other provisions of the zoning ordinance, the provisions of this section shall govern.
- (10) *Additional Filing Requirements for PMBDs.* In addition to the provisions of sections 30-23 and 30-24, applicants for a grant of special permit for a PMBD shall submit:
 - (a) Scaled massing model or 3D computer model consistent with section 30-24(b);

- (b) Narrative analysis describing design features intended to integrate the proposed PMBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations, as well as an explanation of how the proposed PMBD satisfies each criterion in this section;
- (c) Statement describing how the beneficial open space areas, to the extent open to the public, are intended to be used by the public;
- (d) Site plans showing any “by-right” or special permit alternatives within the current zoning district prior to any site specific rezoning or special permit application under this section;
- (e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus;
- (f) A Roadway and Transportation Plan reflecting the “EOEA Guidelines for EIR/EIS Traffic Impact Assessment” with further attention to public transportation and exceptions, subject to review by the city traffic engineer, director of planning and development, and peer review consultants. The Plan should include the following:
 - i. Graphic and narrative description of existing and proposed means of access to and within the site, including motor vehicular, pedestrian, bicycle, and public or private transportation alternatives to single-occupant vehicles;
 - ii. Description of a proposed transportation demand management (TDM) program identifying commitments, if any, to a designated TDM manager, employer contributions to employee public transportation passes, shuttle bus capital contribution, car pool, van pool, guaranteed ride home, flex hours, promotional programs, support for off-site pedestrian and bicycle accommodations, and similar efforts;
 - iii. Detailed analysis and explanation for the maximum peak hour and daily motor vehicle trips projected to be generated by the PMBD, documenting:
 - a) the projected Base Volume of trips to and from the PMBD based upon the latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers or other sources, such as comparable projects in Newton or nearby communities, acceptable to the city traffic engineer and director of planning and development;
 - b) the projected Adjusted Volume of trips net of reductions resulting from internally captured trips; access by public transport, ridesharing, walking or biking; and through the TDM program cited above; but without adjustment for “pass-by” trips, and noting how those reductions compare with the PMBD guideline of Adjusted Volume being at least ten percent (10%) below the Base Volume on weekday evening peak hours;

- c) the means of making mitigations if it is found pursuant to the monitoring under subsection (7) of this section that the trips counted exceed the projected Adjusted Volume by ten percent (10%) or more, and;
 - d) the projected trip reduction adjustment based on "pass-by" trips for use in projecting impacts on street traffic volumes.
- iv. Analysis of traffic impacts on surrounding roadways, including secondary roads on which traffic to the PMBD may have a negative impact. Results are to be summarized in tabular form to facilitate understanding of change from pre-development no-build conditions to the build-out conditions in trip volumes, volume/capacity ratios, level of service, delays, and queues;
 - v. The assumptions used with regard to the proportion of automobile use for travel related to the site, the scale of development and the proposed mix of uses, and the amount of parking provided; and
 - vi. Analysis of projected transit use and description of proposed improvements in transit access, frequency and quality of service;
- (g) Proposed phasing schedule, including infrastructure improvements; and
 - (h) Shadow study showing shadow impacts on the surroundings for four seasons at early morning, noon, and late afternoon.
- (11) *Electronic Submission and Posting of Application Materials.* Applicants must submit in electronic form all documents required under subsection (10) of this section and sections 30-23 and 30-24 and any supplemental reports memoranda, presentations, or other communications submitted by the applicant or its representatives to the board of aldermen and pertaining to the special permit application unless the applicant demonstrates to the satisfaction of the director of planning and development that electronic submission or compliance with that standard is not feasible. Documents created using Computer Aided Design and Drafting software shall comply with the Mass GIS "Standard for Digital Plan Submittal to Municipalities," or successor standard. Electronic submission must be contemporaneous with submission by any other means. The director of planning and development will arrange to have electronically submitted documents posted on the city web site within a reasonable time after receipt. (Ord. No. Z-16, 12-17-07)"

Table A.

DENSITY AND DIMENSIONAL REQUIREMENTS FOR PLANNED MIXED BUSINESS DEVELOPMENT

The following rather than the provisions of Table 3 in section 30-15 shall apply to development under a PMBD special permit.

As noted at subsection 30-15(4) *Lots*, these requirements apply to the Development Parcel as a whole rather than to any individual lots within it.

Area, frontage, and bulk	All development
Minimum lot area	10 acres
Minimum lot frontage	100 ft.
Max. total floor area ratio	3.0
Min. lot area per dwelling unit	1,200 sq. ft.
Maximum lot coverage	n/a
Min. beneficial open space	20%

Height and setbacks (8)	Streetside facade	Interior development	High rise development
Height (feet)	36 ft.	96 ft.	96 ft. (2), (3)
Height (stories)	4	8	8 (1)
Front setback (7)	Lesser of 15 ft. or 1/2 building height (4)	Greater of 50 ft. or 1/2 building height	100 ft.
Side setback (7)	Greater of 15 ft. or 1/2 building height (5)		50 ft. (6)
Rear setback (7)			100 ft. (6)

NOTES

- (1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of a special permit by the board of aldermen and subject to such height and setback limits as established in footnotes 2 and 3.
- (2) The board of aldermen may grant a special permit to allow building height to be increased up to a maximum of 168 ft., excluding customary rooftop elements, provided the building is placed a minimum of 100 ft. from the front and rear lot lines and provided that the building does not exceed one (1) foot of excess building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.
- (3) Any increase in building height requested pursuant to footnote 2 may not result in the proposed building at any point exceeding the contextual height of the tallest building located within 1,200 ft. of the Development Parcel as of December 17, 2007.
- (4) The board of aldermen may grant a special permit to allow the front setback to be decreased from 15 ft. to the average setback in the immediate area, which shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet from the front setback.
- (5) Side and/or rear setbacks shall be a minimum of 20 feet or 1/2 building height if larger when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (6) Side and/or rear setbacks of non-residential uses shall be a minimum of 100 ft. when such setback abuts any Single Residence District or Multi-Residence District or Public Use District.
- (7) The front, side, and rear setback requirements for parking facility shall not be less than five (5) feet, or shall not be less than fifteen (15) feet when such setback abuts a Single Residence District or Multi-Residence or Public Use District.
- (8) Building height and setbacks shall be measured separately for each building on the site and shall be measured separately for each part of a building which (a) is an architecturally distinctive element, and (b) is setback from the façade of an adjoining lower building element at least twenty (20) feet, and (c) for which there is a change in height of at least one story. Setbacks for non-building structures shall be determined by the board of aldermen.

