

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY JUNE 27, 2011

Present: Ald. Lappin (Acting Chairman), Sangiolo, Shapiro, Yates, Lennon

Absent: Ald. Johnson, Baker, Swiston

Also present: Ald. Danberg, Merrill

City Personnel: Candace Havens (Director of Planning and Development), Rebecca Smith (Committee Clerk)

#163-11 BARBARA HUGGINS of 122 Albemarle Road, Newtonville, appointed as an alternate member of the Conservation Commission for a term of office to expire on May 31, 2014 (60 days 08-05-11). [05/23/11 @ 3:47 PM]

ACTION: **APPROVED AS AMENDED (Amended term expiration to June 30, 2012) 5-0**

NOTE: Ms. Huggins joined the Committee for the discussion of her appointment. She shared with the Committee that she has more experience in zoning and land use, but has a strong interest in wetlands, preserving resources, and enhancing enjoyment of resources. She would like to put her experience to use where it concerns wetlands and is looking forward to contributing to the Community. Ald. Sangiolo moved approval of the item, which the Committee carried unanimously.

#164-11 ROBERT UNSWORTH, 34 Bradford Road, Newton Highlands, appointed as an alternate member of the Conservation Commission for a term of office to expire May 31, 2014 (60 days 08-05-11) [05/23-11. @ 3:47PM]

ACTION: **NO ACTION NECESSARY 5-0**

NOTE: Mr. Unsworth was unable to attend the meeting due to a schedule conflict. The item was voted No Action Necessary and will need to be re-docketed due to the timeline of meetings.

#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] (Planning Board report submitted April 5, 2011).

ACTION: **HELD 5-0**

NOTE: Candace Havens, Director of Planning and Development, stated that the intent of this meeting is to discuss the text of the mixed use element which would potentially be adopted as an amendment to the comprehensive plan. Ms. Havens went on to give a presentation for this item; for details on this, please see the attached Powerpoint document.

Following the presentation Phil Herr, member of the Mixed Use Task Force, handed out a memo which he drafted and distributed to the Committee. The discussion that ensued stayed closely on point with the contents of the memo; for details please see said memo, which is attached to the end of this report.

Mr. Herr clarified a point-he shared that it's important to clear up that mixed use developments aren't *required* to include residential, but the element does speak to mixed use developments that do include residential elements and suggests a set of implementing provisions that could be available to those developments that are residential, as well as some incentives to encourage including housing in mixed use developments.

Ald. Yates brought the third bullet point of Ald. Baker's memo to Mr. Herr's attention. Mr. Herr agreed that it is important to understand the human cost to such developments and not just the financial costs.

The Committee didn't have any further questions or comments at this time related to the proposed amendment and will wait for the planning department's presentation about implementation to discuss such questions such as "how can the general principles and goals expressed in the element best inform decisions for designing mixed-use centers?" and "how should developments relate to the areas around them?". That presentation will take place at the Zoning and Planning meeting on July 12th.

#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].

ACTION: **HELD 5-0**

NOTE: Ald. Gentile joined the Committee at the table to give a background on the item. It had come to his attention some time ago that there were people storing commercial vehicles on property they owned but did not live in.

Ald. Gentile would like the law department to investigate the possibility of only allowing people who live in a home and use the vehicle to be able to store said vehicle at the property. The Committee agreed that this is something that should be looked into.

Ald. Merrill voiced his support for the change that Ald. Gentile is suggesting, as did Ald. Shapiro.

Ald. Yates moved hold on the item which carried unanimously.

Respectfully Submitted,

Cheryl Lappin, Vice-Chairman

163-11

Barbara Huggins

Academic

*Master of Arts
Tufts University
Graduate Department of
Urban and Environmental
Policy and Planning*

*Juris Doctor
Boston University
School of Law*

*Bachelor of Arts
University of Pennsylvania*

Professional

*Admitted to the bar
in Massachusetts
and Mississippi*

INTRODUCTION

Barbara Huggins is a partner in the law firm of Huggins and Witten, LLC, where her practice includes municipal and land use law. Prior to joining the firm, then Daley and Witten, Ms. Huggins served as Law Clerk to the Hon. Mark V. Green, then-Associate Justice of the Massachusetts Land Court; as Law Clerk to Hon. Joseph Trainor and Janice Berry, Associate Justices of the Massachusetts Appeals Court; and as Editor of Landplanner Magazine and the Land Court Reporter. She has a masters degree in planning from the Tufts Department of Urban and Environmental Policy and Planning, where she wrote her thesis on Chapter 40R and Chapter 40B. While pursuing her planning degree, she interned in the Newton Planning Department for the Zoning Administrator. Recent civic activity includes serving on the Zoning Task Force appointed by the Board of Alderman, examining the "de minimis" rule in the Zoning Ordinance. She has a daughter in the F.A. Day Middle School and Newton Youth Hockey.

REPRESENTATIVE PROJECTS

Town Counsel: Town of Stow, Massachusetts 2005-Present:
Represents the Town of Stow in legal matters relating to zoning, land use, subdivision control, permitting (including wetlands), and telecommunications.

Town Counsel: Town of Marion, Massachusetts 2005- Present:
Represents the Town of Marion in legal matters relating to zoning, land use, subdivision control, and permitting (including wetlands).

Special Town Counsel: Town of Middleborough, Massachusetts 2005- Present: Represents to Board of Appeals for legal matters relating to comprehensive permit applications and appeals.

Special City Solicitor: City of Amesbury, Massachusetts 2005-Present: Represents the City of Amesbury for legal matters relating to comprehensive permit applications and appeals.

Special City Solicitor: City of Gloucester, Massachusetts 2009-Present: Represents City of Gloucester in an appeal from a comprehensive permit decision by the Housing Appeals Committee.

Special Town Counsel: Towns of Wareham and Bourne, Massachusetts 2005-Present: Represents Towns' Boards of Appeals for legal matters relating to comprehensive permit applications.

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PRIOR EMPLOYMENT

Intern: Department of Planning and Development, City of Newton, Massachusetts Spring 2005: Reviewed applications for residential construction under city ordinance, and researched and drafted memoranda on zoning topics.

Law Clerk: Massachusetts Appeals Court 2001-2003: Law clerk to the Hon. Joseph Trainor and the Hon. Janis Berry.

Editor, Department of Environmental Protection Reporter and Land Court Reporter; Editor-in-Chief, Landplanner Magazine. 1999-2000: Prepared case summaries and digest entries for decisions issued by the Land Court and the DEP, including cases under the state Wetlands Protection Act. Prepared and edited articles on issues arising from zoning, development, and the permitting process for Landplanner Magazine.

Law Clerk: Land Court Department, Trial Court of Massachusetts 1997-1999. Law clerk to Hon. Mark Green. Court's jurisdiction includes zoning and subdivision control law.

Associate, Maxey Wann & Begley, Jackson, MS 1994-1995
Practice focused on administrative, gaming, and business law.

Senior Staff Attorney, Mississippi Supreme Court, Jackson, MS. 1995-1996. Prepared memoranda on cases and motions before the Court. Drafted and edited opinions and orders for publication.

Robert E. Unsworth

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Experience

President, Industrial Economics, Incorporated, Cambridge, MA. 2005-2011.

Mr. Unsworth is a Principal and Partner with the firm of Industrial Economics, Incorporated (IEc). He joined IEc in 1985 as a Research Analyst, and was subsequently promoted to Associate, Senior Associate, Principal, Chief Operating Officer, and President.

IEc is an internationally recognized environmental policy, economics, and environmental science consultancy. Mr. Unsworth's practice at IEc focuses on helping clients understand the economic and social implications of environmental change, environmental regulation, and natural resource management.

- Mr. Unsworth is an expert in natural resource damage assessment, water economics, and environmental policy analysis.
- He serves as an advisor to the U.S. Department of Justice, the U.S. Department of the Interior, various state, local and Tribal governments, law firms and NGOs.
- He has served as an expert witness in cases involving adverse environmental change.
- He has conducted studies of the potential economic effects of climate change, Federal and state environmental regulations, and regional management of land and water resources.
- He has served on numerous expert panels for the National Research Council, California Energy Commission, European Union, U.S. Environmental Protection Agency, U.S. Department of the Interior, and other governmental and non-governmental organizations.

Education

B.S., Forestry, State University of New York (*magna cum laude*). 1984.

Masters of Forest Science, Yale University, School of Forestry and Environmental Studies. 1986.

Other

Mr. Unsworth has lived in Newton since 1994. He is married to Lisa Unsworth. Their daughter, Fiona, is a student at the Dana Hall School in Wellesley.

Department of Planning and Development

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**WORKING SESSION OF THE
ZONING AND PLANNING COMMITTEE
JUNE 27, 2011**

MIXED-USE CENTERS ELEMENT

**#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**

Mixed-Use Centers Element

Background

Executive Summary

Principles and Goals

Questions for Discussion

Conclusion

Background

- November 2007 - *Comprehensive Plan* adopted
- Spring 2010 - Mixed-Use Task Force appointed by the Mayor, chaired by Phil Herr
- To elaborate on the *Plan's* vision for mixed-use development on the City's largest sites
- Fall 2010 - Draft delivered Mayor
- February and March 2011 – P&D Board held two public workshops
- May 23, 2011 - Introduced to ZAP

Mixed-Use Centers Element

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ZAP Review of Mixed-Use Centers

- June 27 - Mixed-Use Centers Element
- July 12 – Implementation/Applications
 - ✦ Collaborative Impact Assessments
 - ✦ Illustrative Performance-based PMBD
- September – Public Hearing

Mixed-Use Centers Element

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Executive Summary

- Amendment to the *Comprehensive Plan*
- New mixed-use centers can encourage:
 - Modest growth
 - Good transportations connections
 - The best use of land
 - The positive qualities of village centers
 - Creation of places to live, work, shop, play
 - Public amenities and sense of place

Mixed-Use Centers Element

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Executive Summary

- The Element proposes:
 - Strategies for achieving a vision
 - Guidance on design, transportation, housing, and finance
 - More public engagement early in process
 - Proactive vs reactive planning
 - Clear and sensible guidance that is business- and neighborhood-friendly
 - Consistency with other goals of the *Comp Plan*
- The Element raises some questions worth further consideration

Mixed-Use Centers Element

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Principles and Goals

- **Principles:** The basis upon which we determine *how* we want our *Plan* and regulations to work
- **Goals:** *What* we want to see accomplished

Mixed-Use Centers Element

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To which sites should the Element apply?

- Original charge to consider large sites (10+ acres)
- Three sites: Riverside, Needham Street, Chestnut Hill Square
- Should the principles, goals, and implementation also apply to smaller mixed-use sites, such as village centers?
- Or not?
- Should the scope expand to other large sites in the future?

Mixed-Use Centers Element

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How should new developments relate to the areas around them?

- “Cause no harm”
- New development should not worsen ease of travel for anyone
- Mitigations should not damage the community or the environment
 - NOT “create *no* changes”
 - “Different” does not mean “worse”
- Should ensure Newton’s economy and community can evolve and adapt to market and social changes
- Should transition gracefully

Mixed-Use Centers Element

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Should housing be required in all mixed-use center developments?

- There are many kinds of mixed-use developments
- Housing is considered integral in this Element
 - Creates vitality
 - Serves city and regional housing needs
 - Eases transition between new development and surrounding neighborhoods
 - If large enough, can create a “real” neighborhood
- Adjacent pedestrian-accessible housing could be integrated into the development
- Appropriateness is site-specific and also relates to real estate market
- Should residential units be required?

Mixed-Use Centers Element

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Is housing really fiscally neutral?

- Element asserts new housing is fiscally neutral (particularly with regard to school enrollment)
- Hard to judge fiscal impact without specific plans
 - Multifamily dwellings produce fewer school children than single-family houses, but more than nonresidential units
 - Downsizing empty-nesters may open up single-family houses to new families
- Fiscal impacts will depend on:
 - The site characteristics
 - Amount of housing
 - Type of housingAll are important in evaluating fiscal impacts

Mixed-Use Centers Element

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What is the right balance between flexibility and predictability?

- **Flexibility** in uses and design
 - Allows developers to build successful projects
 - Permits projects to evolve over time
- **Predictability** gives developers and neighbors assurances
 - What can be built
 - Where
 - Timing of construction
 - Business decisions
 - Gives City a voice in shaping development
- Values can be articulated in Zoning Regulations or development process
 - Comp Plan and Zoning Regs have different levels of specificity

Mixed-Use Centers Element

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How can the Element best inform mixed-use development policy?

- Provide vision with principles and goals
 - Further define what is a sufficient housing component and types of units?
 - Identify types of commercial uses, jobs, or industries should be encouraged?
 - How do we judge the “organic consistency” of a development with its environs?
 - What is a success?

Mixed-Use Centers Element

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Conclusion

- The Planning Department supports the general vision of a Mixed-Use Centers Element
- Some questions may need to be clarified
- July 12th - how goals and principles could be furthered
 - Illustrative Performance-based PMBD
 - Collaborative Impact Assessments

#26-11

Philip B. Herr

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MEMORANDUM

Re: June 24 memo re #26-11 Mixed Use Centers Element draft (Principles)
From: Phil Herr
Date: June 27, 2011

The Planning and Development June 24th staff report on the MMUTF draft is both kind and helpful. To assist in its discussion, below are some observations in response to it, organized under the same topic headings as it used.

- **To which sites should the element apply?**
- **Should housing be required in all mixed-use center development?**

The charge given to the Mayor's Mixed Use Task Force last spring was understood to be preparation of *Plan* guidance re centers like the three that had recently been proposed: large, and including both commercial and residential uses. Interested people often asked about expanding that scope, but especially given the short time that we were given for our work (June through September, 2010), we chose to confine our attention to just that which we were asked to address. Note that no one intended that housing should be required in all mixed-use centers, but rather that our attention was to be focused on those mixed use centers that do so.

In reviewing the draft *Plan* amendment at this point, it is clear that most of its provisions could be equally applicable to mixed use centers of essentially any size, whether those centers include housing or not. Regarding scale of development to which these provisions might apply, the "collaborative assessment" process that is suggested for implementation would by its nature be most attractive to those proposing relatively large developments. However, experience elsewhere indicates that occasionally developers of smaller projects might choose such an option, and there appears to be no reason not to allow that.

The inclusion of housing within a mixed use development can be transformative of the center's character and functioning, making it a far better neighbor for existing residential areas, and making it a more vibrant place over more hours of the day than is otherwise possible. The intention of the Task Force effort unquestionably has been to promote mixed use centers that include housing. However, there was never any consideration given to trying to prohibit mixed use that fails to include a residential component. Rather, the intention is to build upon the precedent set in the crafting of the Planned Multi-Business District (PMBD) zoning, offering a regulatory incentive for those who choose that option, the incentive being more flexible and permissive zoning than is otherwise allowable.

Relatively high densities are reasonably allowable for such mixed uses since their traffic impacts are measurably lower than for single-use commercial developments having the same floor area. Further, housing advocates correctly see mixed use as a means of addressing otherwise poorly met housing needs in this City, requiring little if any public subsidies to achieve affordability goals.

The staff's observation that the applicability of the Mixed Use amendment should be clarified is well taken. That clarification might be accomplished by addition of a paragraph such as the following at the end of section "1. VISION:" (page 1).

"Mixed use centers" as discussed below typically are newly developed or redeveloped complexes of substantial size, perhaps a quarter-million square feet of floor area or more, preferably incorporating both residential and commercial uses. However, most of the principles and goals included below could apply equally well to smaller developments. The particulars of the optional guidance approach as described later would be unlikely to often be chosen for much smaller projects because of its demands. The particulars could also apply equally well to developments that include no residential component, with the noted exceptions regarding applicability of certain implementation measures.

The regulatory changes suggested build upon the existing PMBD zoning, which requires inclusion of a residential component in any development utilizing its provisions. At least initially, that should provide an adequate framework for providing encouragement to mixed use proposals that include a residential component, while allowing other forms of mixed use development just as before, except now gaining further guidance from the *Plan* amendment.

- **Is housing in mixed-use development really fiscally neutral?**

There is a great deal of evidence that housing in mixed-use development in Newton will typically pay in taxes approximately what it costs the City to service it, so that as a matter of City policy, fiscal impact of the residential component of mixed-use development need not be a major consideration in assessing the appropriateness of encouraging it or not. However, the residential component of any given individual mixed-use development might well have substantial fiscal consequence to the City, and therefore fiscal impact analyses of individual projects are a valuable part of assessing the appropriateness of the balance between residential and non-residential use components of individual projects.

The fiscal study prepared by Connery Associates for the developers of Chestnut Hill Square illustrates all of the above. It projects annual municipal costs attributable to the housing component of that development at \$1,525 per dwelling unit, and annual municipal revenue per unit at \$2,454 per unit (page 12), indicating municipal costs equal to only 62% of municipal revenue (compared to the commercial components' costs equaling 29% of revenue).

Arguably the Connery figure is too positive, since it fails to consider any secondary impacts, such as those of new occupants of houses vacated by new residents of the development, or to assess whether use of average rather than marginal per pupil costs is appropriate. However, it is

not credible that such refinements would alter the observation that the housing component of that development is unlikely to be of much consequence to the City, whether that component is made larger or made smaller. For example, using Connery's figures, were the number of dwelling units at Chestnut Hill Square increased by 50%, the net fiscal benefit of the project to the City would rise by just 3%, tiny compared with the range of probable error inherent in such estimates.

That analysis is quite consistent with the fiscal material within and underlying the 2007 *Comprehensive Plan*. See, for example, "Distributional Concern" at pages 10-8 to 10-10 of that *Plan*, now somewhat dated, but Newton's fiscal trends have been remarkably consistent over time. Better analytics could and probably should be undertaken, but that data which we have adequately supports our broad findings, as stated in the draft amendment, perhaps less clearly than would be preferred. Within "6. FINANCE AND MIXED USE," the second paragraph under "Guidance" might be revised to read like this:

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 typically be considered independent of concern over fiscal impacts, although studies to find if that is true in particular cases are an important part of the implementation process being suggested.

- **What is the right balance between flexibility and predictability for new development?**
- **How should new developments relate to the areas around them?**
- **How can the general principles and goals expressed in the Element best inform decisions for designing mixed-use centers?**

The staff's observations made in these three items are best discussed within the consideration of implementation process. For now, note that the suggested approach of implementation is to rely less upon categorical rules about uses or dimensions than the Zoning Ordinance now does, relying more upon performance assessment. The draft suggests that uses should instead be selected taking into consideration such things as promoting functional relationships between other uses in or adjacent to the center, or the level of its demands upon auto access.

The larger the development the less likely that Zoning's existing set of use regulations will suit the developer's intentions, commonly resulting (for large developments) in changes being made to the existing regulations, acted upon almost conjunctively with acting upon project approval, with no established performance rules to guide that process, instead acting based upon overall evaluation of the specific project and its impacts, positive or negative. The approach being suggested differs from that chiefly in moving towards adopted performance rules to guide the process. Crafting those goes beyond the appropriate scope of a municipal comprehensive plan.

#26-11
Received 6.27.11

Memorandum

Members of the Zoning and Planning Committee

From: Alderman Baker

Cc: Board colleagues; Planning and Law Departments; Mr. Phil Herr

Subject: Proposed Mixed Use Element Amendment to the Comprehensive Plan

Date: June 27, 2011

I regret that travel will prevent me from attending the discussion tonight. From the memorandum prepared by the Planning Department it appears that more time and discussion may be needed before the Committee is able to act. In reading the Planning Department memo, several of the issues it raised seemed worthy of further thought and discussion, including possibly getting input from our School Committee colleagues.

First, the comments below should not detract from a thoughtful effort that has advanced our opportunities for shaping the future of the City. Mr. Herr and his colleagues who drafted the mixed use Plan amendment should be commended. Their efforts have given us a strong framework on which to build. Here are some additional thoughts for your consideration.

- A mixed use element that is not at least tied to some likely locations may be challenging to recommend to the full Board. Our colleagues who do not serve on the Zoning and Planning Committee may want to know the likely locations, or if they are not site linked, where a mixed use proposal might then occur.
- As I believe the Comprehensive Plan indicates, but should be clear in this case, there are distinctions between Village centers and Village commercial centers, with the latter being more appropriate for mixed use. It would be ironic, given the Plan's recommendation for further planning by village or neighborhood, rather than city-wide, for a global change to the Plan to produce a village specific impact that had not yet been considered. In other words, even if the Mixed Use Plan amendment is not site-specific, the kind and quality of locations which are appropriate may therefore need further clarification. (Austin Street is a good example of a smaller site which continues to yield useful information about what might work in such locations.)
- The housing implications of a mixed-use element are indeed worthy of sorting out, especially, as the Planning Department memo points out, more units produce more demand for city and school services, despite desires for revenue neutrality. What also may need examination is the tipping point beyond which even a small increase in population will require new facilities because existing facilities are at capacity.
- The Planning Department memo anticipates looking at some possible zoning amendments that might give effect to the new amendment if adopted as part of the Plan. That seems wise, since even a policy as carefully considered as this one may be illuminated by seeing how it would be given effect by new zoning rules. Having a chance to examine those ideas before adopting the amendment to the Plan might lead to some wise refinements to the proposed Plan amendment language itself.

I hope these comments are helpful, and I look forward to seeing you in July.