

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

TUESDAY JULY 12, 2011

Present: Ald. Johnson (Chairman), Baker, Sangiolo, Yates, Swiston, Lennon, Shapiro

Absent: Lappin

Also present: Ald. Danberg

Mixed Use Task Force: Phil Herr (Chair), Josephine McNeil.

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

ITEMS SCHEDULED FOR DISCUSSION:

Appointment by His Honor the Mayor

#164-11(2) ROBERT UNSWORTH, 34 Bradford Road, Newton Highlands, appointed as an alternate member of the Conservation Commission for a term to expire June 30, 2013 [07/01/11 @ 3:13pm]

ACTION: **APPROVED 6-0-1 (Baker abstaining)**

NOTE: Mr. Unsworth joined the table for the discussion of his appointment. Mr. Unsworth has lived in Newton since 1995 and is a partner at Industrial Economics, an environmental consulting firm. He specializes in putting values on economic change and is currently working on the gulf oil spill, forest files, and other policies. In addition, he looks at the effect of government regulations on small businesses. Mr. Unsworth was the President of the company until his term expired; he now holds the position of Director. At this point in his life and career he would like to volunteer some of his time to public service and saw this as a good and relevant outlet.

Ald. Yates asked Mr. Unsworth about whether he's followed the changes to the paths along Quinobequin road. Mr. Unsworth shared that his understanding of the situation comes mostly from what he's read as he wasn't present at any decision making meetings. He understands that the Wetlands Protection Act is a mandate but also meant to provide balancing. He shared that he cannot say whether the balancing was right or not in this scenario as he wasn't privy to the decision making process.

Ald. Sangiolo asked whether Mr. Unsworth has attended any meeting of the conservation commission yet. He shared that yes, he has been to two meetings thus far. After this discussion Ald. Yates moved approval of the appointment which carried unanimously.

#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 7-0**

NOTE: Candace Havens (Director of Planning and Development) gave a presentation to the Committee on the Mixed Use Element. For the details on this presentation please see the attached Powerpoint document. Ms. Havens shared that through this element the City would be trying to provide an incentive for developers to engage the community from early on in the process, as well as receive input on design which should result in the quality that the city would like to see.

Ald. Baker asked that if this is wholly new language and if there is anything else in the existing comprehensive plan that is going to need to be amended. Phil Herr, Chair of the Mayor's Mixed Use Task Force, stated that this amendment was carefully crafted so as to not require any other amendments.

One major question arising from this conversation, presented by Ald. Baker, was where these types of developments can be built. Ald. Baker requested clarity on this point so that the committee can relay the information to the full Board. It was explained that, as written, such developments may occur anywhere that either 10 acres or 250,000 square feet is amassed. These types of developments would not likely arise in village centers as there is a variety of ownership there and to compile so much space for one project is improbable.

Ald. Swiston made the point that the Committee, and Board, needs to decide whether this is a good move for the City without thinking "but not in my backyard"; the main focus of this discussion should be whether this would benefit the city as a whole. She also stated that the Committee should keep in mind whether this is the vision of mixed use that the Board wants to see in the City. She also shared the view that approving the concept shouldn't be delayed just because we don't know every detail for implementation.

Ald. Baker asked for clarification on whether this is a special permit model, which Ms. Havens assured him it is. She shared that the model proposed created to encourage early engagement by the community as a project is more likely to be accepted by the community if the vetting process includes them. The incentive given to the developer for taking part in this process is that they're relieved of certain dimensional controls.

When some members of the Committee vocalized their concern with where these developments could end up, Mr. Herr emphasized the point that developments can't go anywhere that the legislative body doesn't approve them for. The decision is always up to the lawmakers.

Mr. Herr then gave a presentation consisting of different images of mixed use areas in surrounding towns (images available in online version of ZAP report). The cities/towns depicted in this presentation were able to create their mixed use areas because of similar changes that are being proposed in this element. Ald. Johnson requested that Mr. Herr provide more detail about the connection between the element and how an amendment such as this can produce the desired mixed-use developments.

There was a discussion following Mr. Herr's presentation about how to encourage desirable designs. Mr. Herr stated that the idea is to create an environment in which good

developers want to do work here. Ald. Danberg referenced Ms. Havens' comments about having design guidelines, in which preferable designs would be encouraged.

Ald. Baker noted that this element was proposed as yielding revenue neutral projects, which is an important component to this as the schools are already at a certain capacity level.

Josephine McNeil, Can-Do Executive Director, and member of the Mayor's task force stated that the Task Force was asked to address mixed use but also in a housing context. She doesn't believe that a project should be denied solely because it may add children to the schools. Ms. McNeil also stressed that everyone should be concentrating on a concept; this proposal is the proposal of a process.

Lynn Sweet, 415 Grove Street, is a member of the neighborhood coalition. She stated that she is appreciative of the work that has been done by the Planning Department and Task Force but has some concerns about putting so much emphasis on the collaborative process. Giving a timeline may work to a neighborhoods disadvantage. She stressed the fact that it's difficult to predict how many children are going to be in a school until actual enrollment. She shared that metrics and setting standards concern her because the bottom line is that all parties involved are representing data the way that serves their client best.

Ald. Baker shared that he is uneasy with the fact that this plan could confuse the basic model of zoning districts. His concern is not so much having residential uses in commercial zones, but having commercial uses in residential zones thereby creating a level of density that there wouldn't otherwise be there. In response, Mr. Herr again stated that this element does not allow a commercial development in any location unless the BOA votes to have the zoning allow it. The element simply allows the proposal, but it's up to the legislative body to decide whether the proposal is approved.

Ald. Yates proposed that they should stipulate that the overlay only be put onto mixed use, industrial and commercial districts.

There was a motion to hold the item until the Committee reconvenes in September. The motion carried unanimously.

Respectfully Submitted,

Marcia Johnson, Chairman



Setti D. Warren
Mayor

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

M E M O R A N D U M

DATE: July 7, 2011

TO: Alderman Marcia T. Johnson, Chairman, and
Members of the Zoning and Planning Committee

FROM: Candace Havens, Director of Planning and Development
Jennifer Molinsky, Chief Planner for Long-Range Planning
Seth Zeren, Chief Zoning Code Official

RE: **Working Session**
#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

CC: Mayor Setti D. Warren
Board of Alderman
Planning and Development Board
Marie Lawlor, Assistant City Solicitor

Petition #26-11 was previously introduced at a Working Session on May 23, 2011. On June 27, the Committee held a working session which focused on the goals and principles in the proposed Mixed-Use Centers Element amendment to the *Comprehensive Plan*. This memorandum provides supporting materials to the discussion on July 12, which will focus on how the Mixed-Use Element might be implemented through changes in City policies, procedures, and/or zoning regulations.

Executive Summary

The Mixed-Use Element amendment to the *Comprehensive Plan* lays out an implementation process that is supplemented by two illustrative documents prepared by the chair of the Mayor’s Mixed-Use Task Force (see Planning Department memorandum dated June 24, for a discussion of the vision, principles, and goals of the draft Element). The implementation steps recommended in the Element include:

- 1) Adoption of the Element as amendment to the *Comprehensive Plan*
- 2) adoption of basic regulatory measures to encourage good mixed-use development, such as the Illustrative Planned Multi-Business District (PMBD) overlay zone
- 3) Creation of analytic tools to evaluate impacts of schools, traffic, and fiscal impacts
- 4) Restructuring the development review process to give a more predictable role to neighbors and broader City interests in the design of large mixed-use developments

The Planning Department broadly supports the aims of improving community participation and allowing and encouraging high quality mixed-use development. However, there are a number of questions about how these aims should best be accomplished. The following areas are discussed in greater detail in the Analysis section of this report: applicability of the Element, modeling project impacts, the nature of the collaborative process, and zoning changes.

I. Summary of Implementation Recommendations and Illustrative Documents

The draft Mixed-Use Element makes a number of recommendations for implementing its vision for mixed-use development and for enhancing the involvement of neighbors in the analysis of likely impacts from proposed new developments. Following adoption of the amendment to the *Comprehensive Plan*, the Element recommends that the City create a collaborative process for project review and input. This process would utilize models developed by City staff to estimate major developments’ traffic impacts, fiscal impacts, and effects on schools, and would then be used by City officials, staff, project developers, and community members. The Element recommends that these models include “red flags” that indicate unacceptable impacts. In addition, the Element recommends guidance for appropriate design, potentially including measurable metrics on dimensions, mix of use, and design (potentially also including “red flags” on design), which may be incorporated into the Zoning Ordinance or other enforceable regulations.

In addition, the Element recommends zoning amendments to improve the process surrounding the review of large mixed-use projects. Specifically, the Element recommends amending the PMBD zoning provision.

The Mayor’s Mixed-Use Task Force also prepared two documents that illustrate how a new collaborative process and the revised PMBD would practically work. These are not part of the

amendment to the *Comprehensive Plan*, but provide an example of how some of the Element's concepts might be implemented.

“Illustrative Performance-Based PMBD”

This illustrative document discusses how the existing PMBD might be revised to make it more useful (to date, no project has used the PMBD). The document suggests that zoning for large sites should be based on performance measures as opposed to prescribing firm dimensional or use controls. Along with a number of smaller revisions, the Illustrative PMBD amendments contain a new “performance-based option” wherein an applicant would have the option to submit to a Collaborative Impact Assessment in exchange for freedom (via special permit) from all use and form regulations. The Collaborative Impact Assessment would be performed by a group of residents selected by the Mayor working in collaboration with City staff and the Aldermen from the affected ward(s), and would use impact analysis metrics developed in advance of any specific project (see below).

“Collaborative Impact Assessments”

This document describes four types of assessments: school, design/character, fiscal, and transportation/access. It notes that a lack of a collaborative format for coming to agreement about likely impacts may create the appearance of secret “backroom dealings” that may lead to finished proposals being presented to communities with little chance for community input. For schools, the document suggests identifying a committee of citizens and staff from representative view points, which would then build a model of how developments affect enrollment; the group would improve the model iteratively based on experience from actual development projects. For addressing the impacts of design on community character, the document suggests the creation of design guidelines for different parts of the City. The document is more vague about how to assess fiscal and transportation impacts and suggests that impact estimates are at best “very approximate,” but still “worthy of the attempt.” The document concludes by noting that these assessment tools do not require Aldermanic approval. The document recommends a first attempt to create an impact model for schools, followed by attempts to create models for each other area.

II. Analysis

The Planning Department broadly supports the general vision of the draft Element that mixed-use development should be an attractive option for developers, sensitive to and integrated with their surroundings, provide public amenities and a strong sense of place, and be responsive to City goals, especially regarding housing and job creation. The Planning Department also believes strongly in collaborative processes that involve neighborhood stakeholders, as well as in employing data and metrics to quantify the potential effects of project. However, in considering specifically how this draft Element would be implemented, the following questions are important to consider:

1. **Applicability:** As the Chairman of the Mayor’s Mixed-Use Task Force noted in his memo to the Committee on June 27, the Element’s applicability might be clarified and offered a definition and explanation. Staff appreciates the simplicity of the first part of his proposed definition which describes them as “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.” This definition is not overly prescriptive, but provides a sense of scale. Alternatively, it could make reference to a certain land area (such as roughly ten acres, which was the point of reference for the Task Force).
 - **Which sites should be included?** The charge of the Mixed-Use Task Force was to consider potential mixed-use developments on the City’s largest developable sites, of which there were three obvious ones at the time the group convened: Chestnut Hill Square, Riverside, and Needham Street. Approvals for Chestnut Hill Square have been granted and Riverside is in the process of preparing plans. Other smaller parcels could be assembled into larger developable lots or remaining large parcels could be subdivided, so identification of specific sites in this document may render the document less relevant over time. Staff recommends eliminating references to specific sites unless they provide site or area specific guidance for development outcomes. This guidance of the Element may also be useful for smaller sites, but as noted by Chair Herr, some requirements may be a bit onerous. However, developers in village centers, for example, could find new procedures or zoning to be useful and could be allowed and encouraged to use it.
 - **Should any aspect of the Element’s implementation be optional?** The Element suggests new processes and zoning regulations, while the supporting documents suggest that some aspects might be at the option of the developer. This is one of the key features of the pairing of the revised PMBD and the Collaborative Assessment. The PMBD provides more flexibility in design if the developer engages the community in project development early in the process. The developer would still have the option to apply an existing zone to a large site, such as BU4, and would be required to conform to the existing dimensional standards for that zone.
2. **Modeling the Impacts of Potential Development:** The Element and its supporting documents suggest developing models of the impacts of potential development and identifying unacceptable thresholds for impacts through a collaborative process including community members and City staff.
 - **What is the purpose of impact assessment?** Impact assessments of different development options can guide and shape a project by identifying various impacts so adjustments can be made to ensure there are no adverse consequences on the community as a result. For example, assessment of traffic generation of various uses can lead to selections of uses that minimize demands for infrastructure or burdens on the immediate neighborhoods. They

can also inform the ways in which sites and their connecting roadways can be complementary.

3. **Collaborative Process:** The current public process requires a developer to meet with the City's Development Review Team as early as possible and to reach out to neighbors to inform and be informed. The City's professional planners help developers understand the community's goals and objectives and applicable laws and advise on what kinds of projects are most likely to be successful, given these parameters. Per the Board's Rules, developers are encouraged to submit plans that are sufficiently complete so as to provide a clear picture as to their intentions and formal review begins. The downside of this is that by the time a project receives formal review and public comment, a great deal of time and money has been invested by the developer and plans are less apt to be altered without considerable additional expense. Opportunities for the public or decision makers to seek positive changes may be more difficult to incorporate as a result. The Element proposes creation of earlier opportunities for input.
- **What does the collaborative process look like?** The Element's vision of a collaborative process is that it is formal, set out in advance, and ensures a place for representatives from surrounding neighborhoods at the table early in the development process. The process might be established by regulations, as suggested in the Illustrative PMBD document, or adopted into Aldermanic or Planning Department procedures. It might be optional as discussed above, where participation in the process by a developer is incentivized by relief from dimensional controls. The Planning Department recommends that the process indeed be formalized in some way, so as to offer some predictability of process, and that it should be perhaps mandatory for projects of a certain size.
 - **What is the right time for community input and impact modeling?** Giving community members a real chance to influence a project likely means involving the community very early in the design and visioning of a project. In the Finance section, the Element states that the City should specify the scoping requirements, prepare the metrics to be used, and community members should gather information and critique its use. While this may be an inclusive approach and provide a new level of citizen engagement, it may be asking people to do things for which they are not necessarily qualified. Alternatively, it may be more efficient and fair to assemble a group of citizens who *are* qualified in the areas of expertise (finance, schools, traffic, etc.) in addition to citizens-at-large to develop metrics, so there is a common approach to evaluating any project relative in the same manner. These metrics could also be used for smaller sites and/or for evaluating cumulative impacts.
 - **What is the best way to incorporate neighborhood involvement?** One avenue would be to revise the Board Rules to require community meetings to reach consensus prior to the special permit application process. Another approach would be to create a review committee of diverse perspectives for each project to better represent community interests, with special care being taken to determine a fair way to select the members of

such a group. A third option might be to require a conceptual review, utilizing the familiar public hearing process, followed by a second public hearing for final approval, at which the developers would submit detailed plans such as those now submitted at the (only) public hearing. The public would be invited to comment at both public hearings. Developers would need to obtain conceptual approval to move to the next stage. The public would have a chance to weigh in earlier and the plans would be more easily and cost-effectively altered in the conceptual stage.

- **What is the role of the City’s professional planning staff?** City staff would continue to meet and advise potential developers as early as possible and to inform them of the options for collaboration. They would play a valuable role in setting up the processes for generating models that can be reused and possibly customized for particular projects, as well as in facilitating agreed-upon community engagement processes. However, there is a limit to staff resources, so a clear process and prioritization is important.
4. **Zoning.** The Element suggests that zoning changes would be required to carry out its vision for mixed-use development.
- **How is the specific vision for each site or area developed?** Planning staff believes that the Element lays out an excellent general vision for mixed-use centers in Newton, as is appropriate for an overarching guiding document like the *Comprehensive Plan*. The Element does not lay out specific guidelines for particular sites or areas of the City, however; the broad conceptual guidance provided by the Element is intended to shape future development process, zoning, and proposals. All three sites originally discussed in the group’s guidance are quite distinct and will require specific visions to be articulated prior to their zoning and development. The Element also expresses a desire for the City to be proactive in creating and pursuing what we want for the City of Newton, rather than responding to developer proposals. There are several options for creating site or area specific visions. One possibility would be the creation of area master plans, as the Planning Department is currently undertaking for Needham Street that would then be articulated in new zoning districts or design guidelines. Alternatively, the vision for each site could originate with a developer and be debated in the context of creating new a zoning district or specific overlay, as in the case of the PMBD.
 - **Should sites be pre-zoned or should zoning respond to particular development proposals?** Sometimes it is easier to imagine the effects of particular zoning rules in the context of a specific project. The resulting “negotiated” zoning that is proposed at the same time a development proposal is submitted allows for flexibility and control if an agreement can be reached. Over time, this can lead to the creation of specific zones tightly crafted to each development proposal. On the other hand, if there is a clear vision for the character that the City seeks for various areas or villages, pre-zoning establishes the parameters for development based on desired outcomes. A viable base zone, including incentivized use and

dimensional standards, offers developers certainty in assessing sites' development potential and gives neighbors a greater sense about what is possible or expected on a given site based on the City's vision for an area.

- **Should zoning for mixed-use sites consist of overlays and/or new zoning districts?** The Element and its supporting documents suggest a revised PMBD overlay could be used to regulate the development of mixed-use centers. The likely consequence of this would be a specific, negotiated version of the PMBD overlaying the BU4 zone at each of these sites. An alternative solution would be to create zones for the City's target sites, taking into account the specific development goals and neighborhood context of each area and utilizing the performance-based PMBD content, but without an additional layer of complexity involved by placing an overlay on an underlying zone. The specific zoning district approach allows pre-zoning of the City's vision, clarity of what is possible, and flexibility within limits. As both zoning approaches can achieve the same physical development outcomes, the Planning Department recommends the creation of new specific zones for each mixed-use development area because of their advantages in establishing a clear vision and creating flexibility through time.
- **Should housing be required in mixed-use developments?** An outright requirement, as is suggested within the Element, may be difficult to calibrate appropriately across disparate sites and may discourage other, nonresidential types of mixed use. However, incentives, rather than requirements, may be more effective for encouraging mixed-use residential development. Some changes in the Housing Guidance within the Element would be necessary to achieve this approach. The Planning Department also supports the idea of considering both horizontal and vertical mixed use and integration with the housing of the surrounding neighborhood.
- **Should design guidelines be incorporated into zoning requirements?** The Element notes that architectural character varies sharply among different parts of the City, and suggests that design guidelines might be created. Creating design guidelines for each neighborhood would require extensive community input in advance of specific projects and significant costs for consultants and/or staff time to design and write. The Planning Department recognizes the value of design guidelines and supports their creation where a neighborhood vision is well-articulated and/or an area is zoned consistent with the *Comprehensive Plan*. The cost and timing of creating these additional standards must be weighed against the benefits.
- **Should performance standards be incorporated into zoning requirements?** Newton already uses performance-based standards in its Codes, such as in the Noise Ordinance. There are significant advantages to a performance-based approach, including increased flexibility and the limitation of off-site impacts. However, performance-based zoning may not provide a clear picture of the designs or uses that are possible, which often is as

important to residents and decisionmakers when imagining neighborhood character as the “real impacts.” In general, the Planning Department agrees that performance standards can be a useful tool in creating flexibility within zoning, but also believes that more traditional prescriptive standards are important for creating predictability, preserving neighborhood character and encouraging high quality design. Performance standards could certainly be employed to identify targets and thresholds that could influence project design and aid in establishing special permit conditions. Consideration should also be given to the cost of new modeling tools to assess project impacts in advance.

- **Should enhancements to functional and design classifications be included in the Mixed-Use Element?** While staff supports further development of these classifications, this recommendation may be more appropriately addressed in the Transportation and Mobility Element where they are first identified in the *Plan*, as they apply to a broader citywide context. The Transportation Advisory Committee (TAC) also has recommended these documents be updated and/or expanded and this effort will likely be accomplished as a follow-up to the TAC recommendations.

IV. Next Steps

Although there are numerous topics for discussion offered at this stage of review, the Planning Department supports the general vision of new mixed-use centers proposed in the draft Element and offers its comments in the spirit of fine-tuning and further enhancing its efficacy. Based on the discussion and interests expressed by the Committee during this working session and the previous working session, the Planning Department will prepare a revised, red-lined version of the Mixed-Use Centers Element for presentation at the public hearing in September, if the Committee is ready to consider its adoption, with or without changes, at that time.

Philip B. Herr

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MEMORANDUM

From: Phil Herr

Date: July 12, 2011

Re: July 7 memo re #26-11 Mixed Use Centers Element draft (Process)

The Planning and Development staff memo of July 7th helpfully identifies areas for discussion within a context of what appears to be broad agreement between staff and the Mayor's Task force regarding the content of the proposed *Comprehensive Plan* mixed use amendment. The following is organized under the topic headings and bullets used in the staff memo beginning at II. Analysis. There are some important points regarding some of the staff memo wording prior to that, but those will be addressed within the context of the remainder of the memo.

1. Applicability.

Although speaking highly of the language proposed regarding applicability suggested at the last ZAP meeting, staff raise the possibility of using land area as a descriptor of project scale rather than floor area. The impacts deserving special attention under this topic relate much more importantly to floor area than to land area. The Gateway Center at Newton Corner has nowhere near ten acres of land within it, but it is the highest-impact mixed use development to be built in Newton to date.

- **Which sites should be included?** There is Task Force/staff agreement that there should NOT be a scale threshold for applicability of the element. The only concern expressed at this bullet appears to be the draft's citation of the three recent or current proposals. There are just five such citations that word-searching identified in the amendment. The first is under "1. Strategy" at page 2, in the midst of two paragraphs that no longer are appropriate, and should be replaced with one short one with no citation of the three proposals. Three of the others occur in section "7. Mixed-Use Guidance Process." The first mention of Chestnut Hill on the page numbered 13 can be deleted without loss¹, but the other three are helpful in their contexts so should be retained² since they helpfully illuminate the precedents that have led to the kind of approach that is being proposed.

In response to the previous ZAP discussion, a new reference to studies made for Chestnut Hill Square is being suggested on page numbered 12 of the draft amendment, and would be a valuable reference to retain re fiscal impacts.

¹ Chestnut Hill on the page numbered 11 second full paragraph.

² Chestnut Hill on page numbered 13 first paragraph under "Background," and Riverside and Northland separately on page numbered 14 first bullet second paragraph.

- **Should the applicability of aspects of the element's implementation be optional?**
Having the collaborative approach optional was basic to the draft's approach, and was solidly supported by the Task Force. The staff appears to agree, although later under "3. Collaborative Process" the staff suggests that such process should perhaps be mandatory for projects of a certain size.

The intended spirit of this approach is that of a voluntary coming together of the key parties to be involved, which is difficult to sustain if one of those parties is obliged to participate. If a mandate is to be considered, first let that consideration be enriched by some experience with the use or non-use of a voluntary process.

2. Modeling the Impacts

We and staff appear to be in agreement.

3. Collaborative Process

- **What does the collaborative process look like?**
- **What is the right timing?**
- **What is the best way to incorporate neighborhood involvement?**

Here and elsewhere representation from the surrounding neighborhoods in the process is mentioned in the staff memo without mentioning the also important inclusion of representation from the rest of the community. Projects of the scale of those that triggered this effort are of real consequence to residents of the entire City, as evidenced by where feedback has come from. The collaborative description carefully speaks broadly of inclusion. The Illustrative Performance-Based draft cites the make-up of a panel as including "...up to six persons selected by the Mayor from both the near-by vicinity and others having relevant topical or locational expertise or insights, after conferring with the Aldermen from the immediately impacted area."

Some folks have argued that the number of participants in that panel should be larger, but didn't prevail. None were heard to express the view that structured citizen involvement should be limited to the neighbors, though all would agree that persons from the immediate vicinity have a very special legitimacy and importance.

Three kinds of citizen engagement are contemplated, perhaps inadequately described in the supplementary materials. The draft zoning describes two forms of public involvement in review of a specific project, one through a review panel as discussed above, and second through an early public workshop, a cousin to a public hearing but "workshop" is perhaps better suited to the early stage of the project.

The third public role is that of participating in the crafting of the guidance to support that review. The feasibility modeling currently being prepared by citizen members of the EDC is an example of that, drawing heavily on highly skilled resident professionals.

That is the contemplated model for framing of the methods to be used to the extent possible on a diversity of specific projects, fully anticipating that the breadth and depth of the guidance will grow over years of experience with the approach, starting this fall with relatively little in place.

In short, the draft suggests incorporating all of the participation modes mentioned in the staff memo in a carefully structured process with strict timelines. In order to assure applicants that this optional process will be well-structured, predictable in participation and format, and time limited, its structuring should be incorporated into the relatively “secure” context of an Ordinance, not just easily ignored regulations.

- **What is the role of the City’s professional planning staff?**

The staff description seems apt and appropriate.

4. Zoning

The zoning approach being suggested by the Task Force may appear to be a sharp departure from the tradition of Zoning in Newton, but it really is not. It therefore may not be necessary to find concurrence on all of the questions raised in the staff memo in order to go forward with the proposed amendment to the *Comprehensive Plan*, since as presently drafted, all of the likely answers to the questions would probably be found to be not inconsistent with the *Comprehensive Plan*, as proposed to be amended.

- **How should the vision for each site be developed?** The staff words are fine. The Task Force view was that the vision might well come from any source: a property owner seeking guidance from the City, the City on its own initiative, or a developer who has seen something others have not and is wanting to implement it. There is experience with all of those. At this point, we need not preclude any of those by focusing on one.
- **Should sites be pre-zoned?** In some cases, yes, in some cases no. Lexington, which decades ago adopted one of the precedents for what we are considering, followed that adoption with a Town-wide very skilled consultant (not me) study of potential sites for its application. My understanding is that very few of the sites studied have used the tool adopted, but developers have on a number of occasions done so on sites not studied. There is systematic reason to commonly expect that: identification of special opportunities in that way can impact land values so much as to make development more difficult for a long period. Critical to the answer to this question is that this element’s expectation is that the entire area being planned for a center will be under common ownership or common control, which involves some measures which otherwise would be just unnecessary impediments. That distinguishes this approach from the usual downtown studies involving lots of ownerships, in which case pre-zoning is far more likely to be appropriate.
- **Should zoning consist of overlays and/or use districts?** PMBD is currently unclear on this point, reading as if it was one of the uses allowed on special permit, which raised

some complex issues regarding uniformity within a district. The revisions proposed for PMBD by the City for application by Northland would have clarified that, making it an overlay district, and so does the current zoning draft from Riverside. Were PMBD to be a non-overlay district it would have to allow at least some uses by right per Massachusetts case law. With a few small revisions to the draft amendment to the *Comprehensive Plan*, the non-overlay approach could be made to be not inconsistent with the *Plan*, but there seems little reason to prefer that approach.

PMBD provides a good base on which to build future zoning, reinforced by observing that Riverside has initially chosen PMBD for the zoning changes it seeks for its development. Based upon a quick review, the Riverside zoning proposal is in outline much like the PMBD illustration produced by the MMUTF, other than the omission of the collaborative assessment option. Its approach is similar to what Cambridge and many other municipalities do.

If well-executed, building guidance on a series of overlay districts (PMBD-1, PMBD-2, etc.) built on a common structure and largely common language is a sound approach, but is inconsistent with the draft *Comprehensive Plan* amendment in one respect: it doesn't address the concern over adding to the girth and complexity of the Zoning Ordinance each time that a new project of this kind is acted upon.

The developers have prepared a plan that they hope will be acceptable to the City. Their attorneys have worked back from that plan to develop a set of rigid specifications tailored to allow that design, requiring revisions to about a half dozen pages of text in the existing Ordinance plus lengthening the Ordinance by another half-dozen pages, all to accommodate a single development. The next development treated in that same way would likely have similar impact on the Ordinance.

A better variation on that alternative is suggested in the Illustrative PMBD. With the suggested option, the zoning text would not contain lengthy specifications of allowable uses, dimensions, and parking rules, leaving those to be determined and embedded in approval documents based upon review of the proposed plan, which is not very different from what happens now, except that in the suggested approach it isn't necessary to amend the Ordinance with each use of the provisions. In the suggested variation, those project-specific details would be recorded as part of the project special permit decision, avoiding Ordinance bloat by reliance on a document (the special permit decision) that if anything is more permanent than the Ordinance itself, which in Newton is in steady flux. This variation would be consistent with the draft *Comprehensive Plan* amendment without need for any change in the proposed text to accommodate the approach.

A mark-up of the draft amendment to the *Comprehensive Plan* has been drafted to remove any necessity of choosing among the alternatives above prior to adoption of that amendment.

- **Should housing be required in mixed-use development?**

The original concept of the Task Force approach to mixed use regulation has been that allowing use of the new flexible zoning process would be the incentive for the development to serve housing needs, among other things. Under that approach, developments of any scale proposing a purely non-residential mix may do so as long as they do not rely upon this particular form of mixed use zoning, such as simply using B-4. However, based upon discussion of housing inclusion at the previous ZAP meeting on this topic, suggested language has been prepared for the draft *Plan* amendment which identifies acceptable housing efforts as alternatives to on-site inclusion of new housing in order to qualify for that incentive.

- **Should design guidelines be incorporated into the zoning requirements?**

Design guidelines, whether incorporated into zoning or given standing in some other way, are of major importance in providing predictability and transparency in acting on development, whether mixed use or not. The Draft *Comprehensive Plan* element addresses this at page 4 at length, recognizing that “design guidance” should go far beyond architectural guidance, and that it might in some topical areas come closer to the LEED system than the usual architectural guidance through graphic illustrations. It appropriately makes clear that developing such guidance will have to evolve over time because of its difficulty and cost, but pointing to the talent within the community as a potential source for its development in some topical (and maybe spatial) areas. Moving to the next step in fleshing out standards for the street functional standards is a clear step in that direction, as is following through with the work to date on street design classifications.

- **Should performance standards be incorporated into zoning requirements?**

The broad concept of the collaborative process suggested in the Draft Element is to make how a project performs in terms of its impacts upon the vicinity and the City at large a major part of the basis for guiding design, rather than reliance upon categorical specifications regarding uses and dimensions. Experience shows that in Newton large projects are not expected to conform to all the detailed specifications of the zoning: those are commonly revised to accommodate such developments if in fact the impacts of that development are judged to be on balance beneficial to the City, regardless of compliance with the static specifications.

Based upon that practice, it is not unreasonable that the team of attorneys for development at Riverside are proposing a long list of changes to the existing zoning rules, from changing the zoning map to revising the PMBD rules. Those changes have no chance of approval unless the Board of Aldermen judge that the performance of the resulting development will be in the best interests of the City: that is the Newton way. The *Plan* proposal simply seeks to recognize that explicitly in the zoning to make clear that there is nothing wrong with tailoring specifics in the case of developments that by

their scale or other attributes are of high importance to the City and are of a kind likely to arise only rarely.

“Performance standards” and “design guidelines” are close cousins. The proposed *Plan* amendment indicates an intention of the City to over time further develop its capacity to provide predictability and transparency to that long-established and perfectly reasonable practice of evaluating and then accommodating out-of-ordinary (*sui generis*) developments, hopefully utilizing both performance standards and design guidelines in the process of doing so.

- **Should enhancements to functional design classification be included in the element?**
As discussed just above, following through with the development of a system of classifications and related guidance is exactly the direction that this draft element advocates. The existing *Comprehensive Plan* currently addresses the importance of completing the street classification effort at four locations outside of the “Transportation and Mobility” element where it is discussed at length: in “The Newton We Want” (page 1-7), “Excellence in Plan-Making” (page 2-3), “Land Use” (page 3-25), and “Implementation” (page 11-6). It seems quite appropriate given those observations to mention it one more time in an element where enhancing the classification effort can play a vital role in addressing the concern that transportation engineering can always make anything work anywhere if allowed to alter the roadways without formal guidance.

NEXT STEPS

The Planning staff memo suggests as next steps,

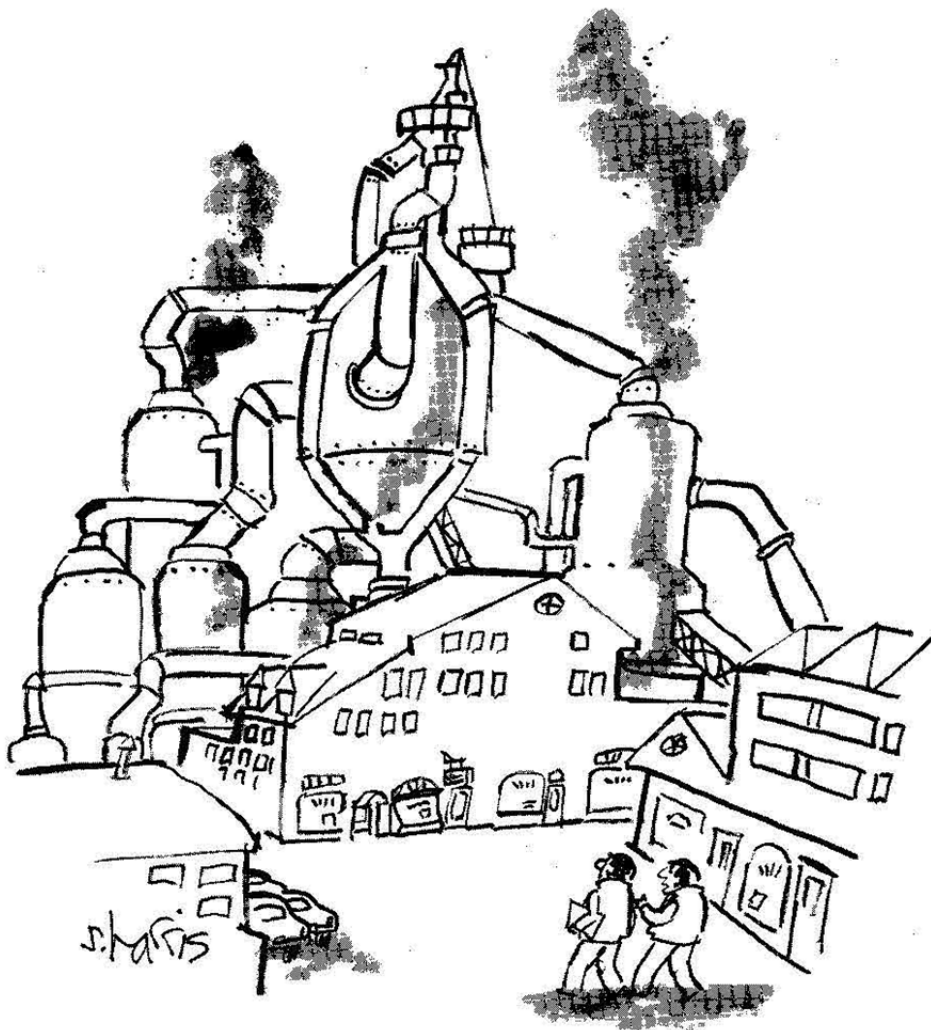
“Based on the discussion and interests expressed by the Committee during this working session and the previous working session, the Planning Department will prepare a revised, red-lined version of the Mixed-Use Centers Element for presentation at the public hearing in September, if the Committee is ready to consider its adoption, with or without changes, at that time.”

It may be possible to avoid the red-lining and to present at the hearing a draft supported in its entirety (at worst with a footnote or two of dissent) by the Zoning and Planning Committee, the Planning Department, and those members of the former Mayor’s Mixed-Use Task Force willing to attend a meeting before then. That would greatly increase the likelihood of a prompt decision by ZAP and by the full Board of Aldermen.

A red-line mark-up now exists of the October 2010 *Comprehensive Plan* draft amendment reflecting the staff’s memos of June 24th and July 7th and the discussion at and communications to the ZAP meeting of June 27th. Barring unforeseen contingencies it seems likely that reflection of the results of the ZAP discussion on July 12th and be incorporated into it and transmitted to the staff the next day, and a small meeting arranged to accommodate discussion among representatives from ZAP, the staff, and the Task Force. The staff might then make such further redline revisions as they deem appropriate, and if responding former Task Force members agree,

that version can go to a public hearing as a not-redlined agreed-upon version, without the confusing and potentially divisive burden of a redlined document for the hearing. As a fallback, limited redlining or footnotes with dissents could be relied upon.

If we want developers, neighbors, staff, elected officials, other concerned citizens, and assorted technicians to collaborate in reviewing the biggest developments the City has experienced in living memory, surely we can get just the few of us to promptly collaborate on bringing a consensus *Comprehensive Plan* amendment forward for a public hearing.



"It's a mixed-use facility: retail space, low-rent housing, luxury apartments, and an area set aside for making steel."

Department of Planning and Development

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**WORKING SESSION OF THE
ZONING AND PLANNING COMMITTEE
JULY 12, 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**

Implementation of the Mixed-Use Centers Element

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Mixed-Use Centers Element

- 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

Implementation of the Mixed-Use Centers Element

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- The Element proposes:
 - Strategies for achieving a vision for mixed-use sites
 - 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*
- Two illustrative documents as examples of how to achieve objectives

Implementation of the Mixed-Use Centers Element

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Implementation Recommendations

- 1) Adopt the Element
- 2) Revise Zoning Ordinance
 - ✦ Illustrative Planned Multi-Business District
- 3) Creation of analytic tools to evaluate impacts
 - ✦ Collaborative Impact Assessment
- 4) Restructure development review process to engage the community earlier

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Illustrative Performance-Based Planned Multi-Business District

- Revision of existing PMBD
- Expands range of applicable sites
- Creates new “performance-based option”
 - Developer participation in pre-application Collaborative Performance Assessment
 - Establishes performance-based standards
 - Requires modeling of impacts
 - Waiver of regular dimensional, density, and use regulations

Implementation of the Mixed-Use Centers Element

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Collaborative Impact Assessments

- Complements PMBD
- Describes four types of assessment:
 - 1) School
 - 2) Design/character
 - 3) Fiscal impacts
 - 4) Transportation/access
- Create teams of citizen experts and City staff to create models to assess impacts
- Model school enrollment, traffic, and fiscal impacts to inform design choices
- Design guidelines to address questions of neighborhood character

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- Planning Department broadly supports the goals of the Element:
 - Attractive to developers
 - Sensitive to and integrated with their surroundings
 - Provide public amenities and a strong sense of place
 - Responsive to the City's economic development and housing goals
 - Involves community early in shaping outcomes
 - Data and metrics can improve mixed-use development

Implementation of the Mixed-Use Centers Element

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Applicability

- Set some threshold—perhaps 250,000 square feet of floor area or minimum of 10 acres
- Which sites should be included?
 - All large mixed-use developments
 - Remove references to specific sites that may become dated
 - Encourage use but not require for village centers
- Should any aspect of implementation be optional?
 - Key feature of PMBD is the option feature
 - Incentivizes collaboration and conversation
 - Insistence doesn't guarantee cooperation

Implementation of the Mixed-Use Centers Element

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Modeling of Impacts

- Developed in advance by community members and City staff
- Guide design and uses to minimize adverse impacts on the community
- Technical models for
 - Schools
 - Traffic
 - Fiscal impacts
- Design Guidelines
- Can help identify conditions or mitigations

Implementation of the Mixed-Use Centers Element

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Collaborative Process

- Current process
 - 1) Development Review Team
 - 2) Encouraged to conduct neighborhood/aldermen outreach
 - 3) Submission of complete proposal for review
- Much time and money invested before a formal review and public comment
- Opportunities for positive changes may be more difficult to incorporate by public hearing

Implementation of the Mixed-Use Centers Element

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Collaborative Process

- What would the alternative process look like?
 - Formal, pre-determined process
 - Ensures a place for community voices
 - By ordinance, such as new PMBD
 - Planning Department procedures
 - Revised Board Rules
- What is the right time for community input?
 - Real influence means involving community early
 - Per Element, City staff should specify scoping requirements and acceptable impacts in advance through a collaborative process
 - Alternatively, qualified citizens could be drafted to develop metrics with staff

Implementation of the Mixed-Use Centers Element

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Collaborative Process

- What is the best way to incorporate neighborhood involvement?
 - Require consensus at community meetings prior to special permit application
 - Require formal conceptual review, followed by second public hearing for final approval
 - Create a review committee for each project to represent community interests and metrics
- What is the role of the City's professional staff?
 - Continue to meet and advise potential developers
 - Inform developers of options for collaboration
 - Play key role in developing models of impacts
 - Staff time is a limited resource ~ clear process and prioritization is important

Implementation of the Mixed-Use Centers Element

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Zoning

- How is the specific vision for each area developed?
 - Broad guidance, not site-specific
 - Three named sites are quite distinct
 - Proactive vs. reactive – The Newton We Want
 - Master planning, e.g. Needham Street
 - Community in collaboration with staff and developer for specific zone and/or overlay, such as the PMBD

Implementation of the Mixed-Use Centers Element

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Zoning

- Should sites be pre-zoned or should zoning respond to particular proposals?
 - Easier to imagine the effects of zoning in the context of a specific project
 - The PMBD is an example of this “negotiated zoning”
 - Tightly-crafted zoning for each project
 - Pre-zoning, based on shared vision of City goals, can create certainty for neighbors and developers over the long term
- Should zoning for mixed-use sites consist of overlays and/or new zoning districts?
 - New zoning districts are an alternative to PMBD overlays for each development
 - The Planning Department supports specific zones for their clarity and predictability
 - Illustrative PMBD overlay allows both options

Implementation of the Mixed-Use Centers Element

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Zoning

- **Should housing be required?**
 - Difficult to calibrate the appropriate amount of housing across different sites
 - Incentivize, rather than require, mixed-use housing
 - The Planning Department supports incorporating housing in surrounding neighborhoods
- **Should design guidelines be created?**
 - Effective way to support distinctive character of areas
 - Requires extensive community participation and costly staff or consultant time to create

Implementation of the Mixed-Use Centers Element

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Zoning

- Should performance standards be incorporated?
 - Optional Collaborative Impact Assessment embraces performance-based standards in exchange for design and use flexibility
 - In practice, building form and use may be as important to neighborhood character as “impacts”
- Should enhancement to road classification be included in the Element?
 - Roadway design addressed in Transportation and Mobility section of the *Plan*
 - TAC recommended

Implementation of the Mixed-Use Centers Element

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Next Steps

- Incorporate ZAP comments into revised text
- Present at public hearing in September
 - Auxiliary documents not part of element
 - Implementation details to be developed if Element adopted
 - Will return to ZAP with zoning language
 - ✦ Feedback on Illustrative PMBD welcomed

Presentation to the Newton
Zoning & Planning Committee

Philip Herr July 12, 2011

Responses re staff comments on
MMUTF Draft Mixed Use Centers
Comprehensive Plan Element



Lexington

Lexington





Lexington



Lexington

Lexington



West Newton





South Hadley



South Hadley



Falmouth

Greenfield





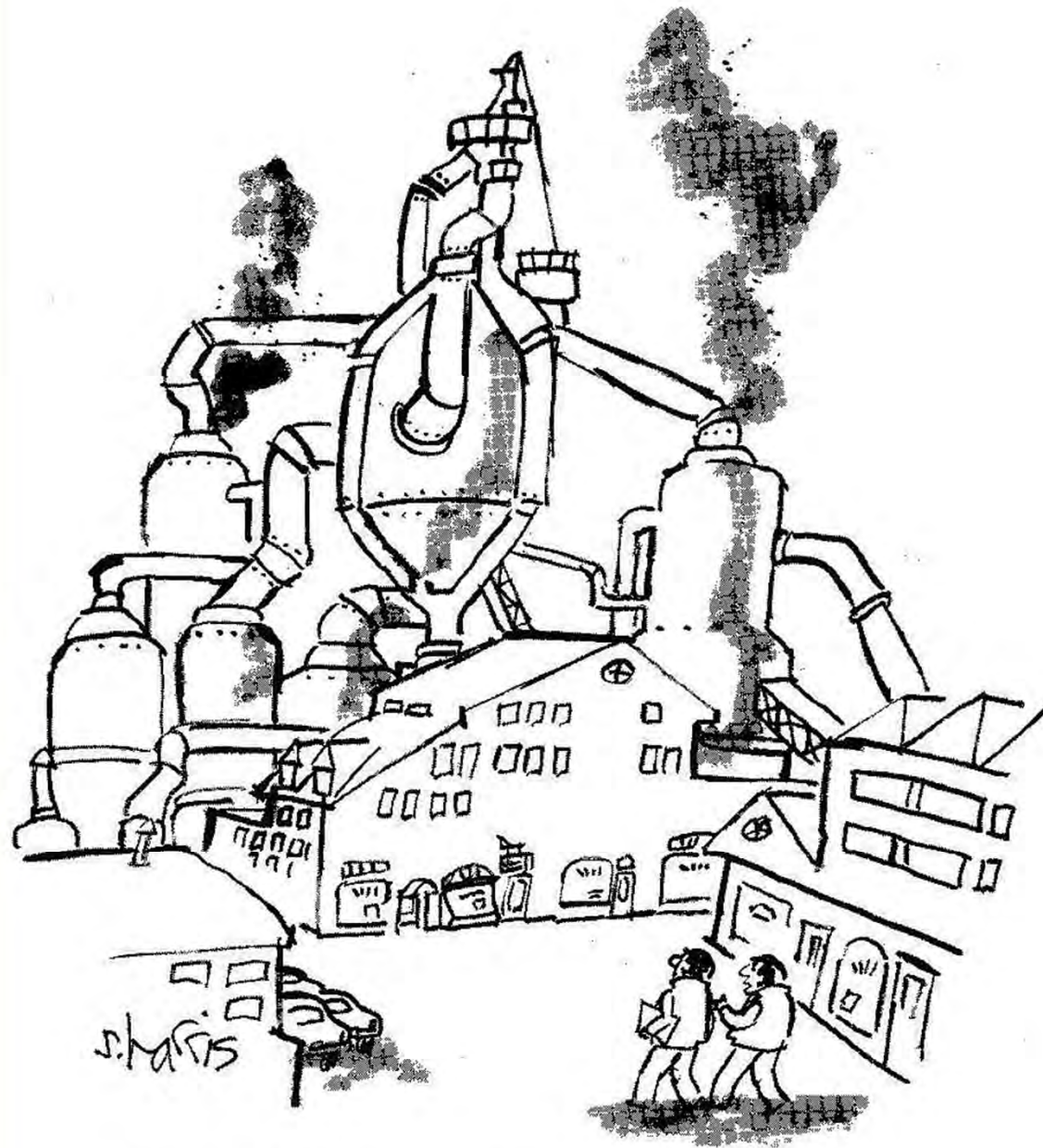
Greenfield



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Canton





"It's a mixed-use facility: retail space, low-rent housing, luxury apartments, and an area set aside for making steel."