

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY OCTOBER 24, 2011

Present: Ald. Johnson (Chairman), Baker, Yates, Sangiolo, Lappin, Swiston, Lennon, Shapiro; also present: Ald. Crossley
City Staff: John Lojek (Commissioner, ISD), Seth Zeren(Chief Zoning Code Official), Jen Molinsky (Chief Planner of Long Term Planning), Rebecca Smith (Committee Clerk)

#272-11 RICHARD & ANDREE WILSON requesting that His Honor the Mayor and the Board of Aldermen accept a Conservation Restriction on approximately 1.5 acres of their property at 15 Bracebridge Road; the proposed Restriction has been reviewed and approved by the Newton Conservation Commission and the Newton Conservators and will be held by the Newton Conservators. [9/26/11 @2:04PM]

ACTION: **HELD 8-0**

NOTE: The counsel for the petitioners was not prepared to come before committee again this evening and so the item was held until out November 14th meeting.

Public Hearing held on October 24, 2011:

#249-11 FRANK UTANO et al. filing with the City Clerk on August 11, 2011 a Group Petition with 51 qualified voter signatures, pursuant to Sec. 10-2 of the City Charter, requesting a special meeting with the Board of Aldermen to discuss the amended zoning laws scheduled to take effect in October, 2011. [August 18, 2011]

NB: Board action shall be taken not later than three months from the date the petition was filed with the City Clerk. [Nov 9, 2011]

ACTION: **NO ACTION NECESSARY 8-0**

NOTE: Ald. Johnson opened the public hearing. Frank Utano, 8 Long Meadow Road, addressed the Committee. Mr. Utano submitted this group petition because he believes that the change to FAR will hurt the people in the mid-sized lots. He is concerned that, because of this change, people will not be able to build what they were previously able to. Mr. Utano requested that there be another study period implemented to allow for the collection of more data and develop a clearer understanding of the impact to the changes in the FAR. He also asked for clarification as to why the Planning Department and the Board of Aldermen are choosing to make this change. It was explained to him by the Aldermen that this is because of the elimination of Footnote 7 of Table 1 in section 30-15, which removed (amongst other things) the rule that FAR applies to construction where 50% or more of the original structure was demolished, but not to construction where less than 50% was demolished. This 50% rule led to the creation of excessively

large homes that were not under the regulation of FAR. To remedy this, the footnote was removed and the changes in effect now were proposed. Additionally, the FAR requirements were all the same across the board prior to the change. Now, there is a sliding scale which allows for more appropriate numbers for the different sized lots.

Mr Yu Sang Kwan, 27 Faxon Street, shared his concerns about the changes. He is frustrated that his basement counts in the calculation. It was discovered though through the correction of Commissioner Lojek, that Mr. Kwan's concerns are based off incorrect information and encouraged Mr. Kwan to go to the ISD counter discuss the calculation with him. Micha Avromavich, 26 Morton Road, also spoke to the committee and shared his inquiry about how this would affect the City financially in terms of tax impact. Ald. Lappin later commented that the tax implication is something that should be looked into.

After Mr. Avromavich's statements, and seeing and hearing no other members of the public wishing to speak, Ald. Johnson closed the public hearing.

The Committee laid this item on the table while they discussed the next item, item, #49-11. After item #49-11 was discussed the committee revisited their discussion on item #272-11 to take some public comment and to vote the item:

Chris Utano, Bontempo Road, shared his perspective that the benefit of the extension of the study period would be to give the Aldermen more time to understand. and be comfortable with. what they have voted for.

Steve Vona, 77 Oldham Road, agreed with Chris Utano and expressed his desire to put the brakes on this change so that the Board can receive as much information as possible and understand the impacts.

Mr. Avromavich also expressed his concerns about the restrictions that this new method would put on certain lot sizes and attempted to give the committee some examples. It was decided though that it would be more efficient for David Norton, Zoning Enforcement, to sit down with Mr. Avromavich to understand the scenario he is implying would be true under this new FAR calculation; Mr. Norton will bring back the report and the outcome of this.

This item was voted No Action Necessary as is required under the deadlines associated with group petitions. The committee also decided that any further conversation pertaining to Mr. Utano's request can be discussed under the auspices of the following item, #49-11.

#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]

ACTION: **HELD 8-0**

NOTE: Jen Molinsky, Chief Planner for Long Term Planning, presented the data collected by the Planning Department thus far. The memo containing this data is attached to this report. Ms. Molinsky explained that since February the department has

collected about 70 worksheets which reflect a range of scenarios: some are actual projects that people came in to get permits for, some are potential projects, and some are just the existing property before and after the change. The numbers don't include the key grouping of people who will be better off with the change; these people were waiting for the October 15 implementation date to submit their plans. Because the Planning Department is missing this crucial section of data, the numbers presented are by no means a scientific sample. Now that the deadline has passed, the Planning Department will continue to collect worksheets and will be receiving them from these residents who were waiting to benefit from the new calculation.

After her overview of the data, Ms. Molinsky directed everyone's attention to the Planning Department's memo outlining the figures she was referring to. She explained that from the 70 worksheets the Department received, there were 5 properties that were over the FAR limit before and after the change; 32 properties under or at the FAR limit before and after the change, and 31 properties that were under the FAR limit before the change but over the limit afterward. 1 property out of the available data was over before October 15, and under after.

If a house went from under the FAR to over it, Ms. Molinsky looked into what was pushing it over and discovered it was a mix between basements, garages, third stories; what was most often the problem though was the element of the third story. Ms. Molinsky also noted that many of the houses designed before October 15 were designed to meet the former FAR regulations. Though she cannot comment on whether or not it's going to happen this time around, it is possible that we could see design implications to fit this method of FAR.

Pres. Lennon stated his concerns about what the data outlines so far. Mr. Norton, shared that there are over 700 permits that could be affected by FAR and that of those 700 we only have information for 70. Mr. Norton also made the point that 90% of the 31 properties that Ms. Molinsky explained would be pushed over the limit with this change would actually work within the new FAR if they were designed differently.

There was some discussion about the level of misconception about this ordinance. Commissioner Lojek stated that, regardless of the education efforts and 3 full information sessions (which were only moderately attended), there is still a misunderstanding amongst the community about what is allowed and what is not. Pres. Lennon appreciates all the education efforts that have been done, but shared with everyone that if there's still such a level of miscommunication and misunderstanding then the Board and the Planning Department are collectively not doing a good enough job explaining it. He stressed that perhaps a different approach should be taken to assist people with understanding this change.

Ald. Swiston requested that the Planning Department provide information regarding the number of submissions that come into the office. She'd like to see a comparison of the post Oct 15 submissions compared to normal submission of this time period.

Ald. Baker explained that there is more to the FAR amendment than just the numbers that were settled on, there was the policy decision of amending what should be counted. Before the new FAR was put into place, space that should have been counted wasn't being counted and it skewed results. Ald. Baker acknowledged that there are going to be some properties that won't be able to build as much as they used to be able to,

but stated that that is probably appropriate as there were problems with the former methods of calculation. The policy change of amending what is counted was very carefully thought through; reversing the ordinance now would not just reverse the numbers but would reverse the whole revised concept.

Ald. Johnson clarified for the Committee that whether or not we extend the study period, people will continue to be asked to complete the form at ISD when they submit a plan. She then asked Ms. Molinsky whether she believes there would be any benefit to extending the study period. Ms. Molinsky stated that there isn't a benefit; extending the study period would only mean that the Planning Department would not receive plans for the lots that would benefit, as these people would continue to wait for the new FAR method to be implemented. Commissioner Lojek also opined that reversing an ordinance is a dangerous precedent to set and doesn't believe this would be the proper action to take.

Ald. Sangiolo moved hold on the item. Ald. Johnson requested that Ms. Molinsky and Commissioner Lojek further parse out the numbers they presented to the committee tonight so that the committee knows exactly what those numbers represent. The Planning Department and ISD will come back on the 14th of November and present this more detailed information to the Committee. The motion to hold carried unanimously.

Public hearing held on September 26, 2011:

#26-11(2) PLANNING AND DEVELOPMENT BOARD submitting in accordance with Section 7-2 of the City Charter an amendment to the 2007 Newton Comprehensive Plan to create a new Mixed Use Centers Element to be numbered section 3.A in the Comprehensive Plan and to include a vision and guidance for the development or redevelopment of large mixed-use centers. [*Committee must take action by December 12th*]

ACTION: **APPROVED 8-0**

NOTE: Seth Zeren, Chief Zoning Code Official, gave a presentation to the Committee on the revised version of the Mixed-Use Element for which changes were made to ease the concerns of the Committee. This final draft is being presented after much discussion in committee. For the details of this presentation please see the attached powerpoint as well as the planning memo.

Mr. Zeren explained that the biggest change is adding emphasis that the location of mixed use centers will be in commercial or business zoned districts. This was made to further reinforce that these developments can't be pushed out into residential districts. The other major change was that there are now two bullet points on page 3A-1 instead of three; the middle bullet point which touched upon housing was deleted. For the outline of all revisions made please see the attached document entitled "Mixed-Use Element-Table of Major Revisions"

Ald. Sangiolo inquired about the last sentence of the revisions for pages 3A-2 and 3A-3 (page 2 of revision chart). She requested clarification on what Mr. Zeren means by "protections beyond those customarily required" and also took some issue with giving the public "assurance that protections...will be provided". Mr. Zeren explained that

“protections beyond those customarily required” refers to additional conditions that may come with a special permit. To remedy her concern about giving assurance that protection will be provided (as one can never promise that protections can be provided), the committee decided to change the language to “...and be assured that concerns will be seriously addressed”.

Ald. Baker moved approval of the item, but requested that the committee strike the word “surrounding” on page 3A-11 (second line from the top of the page). Ald. Sangiolo also requested that on page 3A-6 (last paragraph) the words “some level of” be eliminated [note: all suggested changes should be included in the memo attached to this email dated 10-25-11 which was sent out after this meeting. The memo dated 10-21-2011 was the memo that the committee had in hand this night].

The committee was on the whole very comfortable with this version of the amendment and Ald. Baker’s motion to approve carried unanimously.

#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]

ACTION: **HELD 7-0 (Shaprio not voting)**

NOTE: Ald. Crossley, Chair of the Zoning Reform Group, addressed the Committee and gave an update on the status of the ZRG’s work. They have done a great deal of outreach work thus far and will be holding one more public meeting. This meeting will not be a brainstorming session but rather a presentation of their work and an opportunity for people to ask questions. The ZRG believes that all the reforms proposed in their final report fall into the objectives of the Comprehensive Plan (these objectives can be seen in the attached copy of the ZRG’s final report).

Ald. Crossley explained that there are two efforts that need to be made: one is to order and illustrate the ordinances to make them more user-friendly; she shared that there are companies who will do this. The second effort is to have a comprehensive rewrite of the ordinances; it was determined that doing it all at once is the best course of action. Both pieces, Ald. Crossley explained, could be a 3.5-4.5 year effort.

There is one larger issue of how this will be paid for. There is an initial investment required to get this going; the first phase will cost about \$50,000. Ald. Crossley shared with the committee that though there was much enthusiasm about this from the Mayor’s office, all the money allotted by the Director of Planning and Development for this project has been deleted from the comprehensive plan. This will be something that will need to be followed up on and discussed further. It was decided that the item be held, in order for the Zoning and Planning Committee to have the ability to track the ZRG’s progress with their efforts now that their recommendations have been crafted. The motion was made, and carried unanimously.

Re-appointment by His Honor the Mayor



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Candace Havens
Director

WORKING SESSION MEMORANDUM

DATE: October 21, 2011

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

FROM: Candace Havens, Director of Planning and Development
Jennifer Molinsky, Chief Planner for Long-Range Planning 

RE: #49-11 Ald. Johnson, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of Planning and Development and Commissioner of Inspectional Services review with the Zoning and 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.

CC: Mayor Setti D. Warren
Board of Alderman
John Lojek, Commissioner of Inspectional Services
Marie Lawlor, Assistant City Solicitor

In February 2011, the Board of Aldermen adopted new residential floor area ratio (FAR) regulations under Ordinance Z-77, which changed both the way FAR is calculated and FAR limits. The new regulations became effective last week on October 15th. When the new rules were adopted in February, the Committee requested that the Planning and Inspectional Services departments collect data to compare the “old” and “new” FAR calculations of actual and proposed construction projects in the period before and after the new FAR regulations became effective. In the past eight months, in which the “old” FAR regulations were in effect, the departments have collected approximately 70 worksheets comparing FAR calculations. This memo describes the data collected to date. Both departments will continue to collect data comparing FAR calculations under the old and new regulations.

Data Collection

To facilitate data collection, the Planning Department prepared a worksheet comparing FAR calculations and limits under both the pre-October 15th regulations and new regulations. ISD and Planning staff requested that applicants seeking building permits and special permits to construct additions or new homes prepare the worksheets; the departments also requested that architects and others submit worksheets for potential projects. At the end of eight months, the 70-plus worksheets (about a dozen of which were submitted online) represented the following:

- Actual projects for which owners or contractors obtained building permits or, in two cases, special permits (another worksheet was prepared by an applicant for special permit who withdrew the application upon realizing that the project could be built as-of-right after October 15th);
- Potential projects, in which architects and others submitted worksheets for possible additions or new homes and, in some cases, submitted multiple options for the same property; and
- Existing properties, where worksheets compared FAR calculations for existing homes where no construction was planned.

There were a number of scenarios that were not captured on the worksheets. Those seeking to make additions in the past eight months where it was obvious that FAR was not an impediment did not fill out worksheets. Thus, there are many cases where homeowners obtained building permits for additions who were well under FAR that are not included in the data.

In addition, in the past months, many people came to the counter to understand how their capacity for as-of-right gross floor area compared under both scenarios, whether or not they had an actual project in mind. ISD staff report that individuals who will gain as-of-right gross floor area under the new regulations chose not to complete worksheets (most likely because they had not yet formulated an actual, measurable project, which also meant that staff could not complete the forms on their behalf). As a result, the sample is likely skewed toward those who fare better under the old FAR regulations, as these individuals were seeking to obtain building permits before October 15th for actual projects.

There were errors in a number of worksheets, in both calculations as well as in the identification of new FAR limits. Where spotted, we corrected these, but we did have to remove several worksheets for illegible type or errors that could not be remedied. Errors were particularly evident in worksheets submitted online; many of these had no property address, and several of these were for the same property but with slightly different scenarios. The online option might have appealed to those without a specific project in mind or seeking to assess multiple options who simply wished to see how FAR would be calculated under the old and new regulations.

In addition, some entries on the worksheets appear to be estimates while others were more accurately measured. Since even a small change in measurement can be important to those projects seeking to maximize FAR, many of the worksheets and results drawn from them should not be considered hard fact but rather an impression of how a certain, self-selecting sample has fared under the change in FAR regulations.

In conclusion, the sample of worksheets provides some useful insights but is not a scientific sample: it is drawn from a number of very different types of worksheets with uneven quality of data and omits numerous cases where projects were either well under FAR limits or where applicants decided to wait to apply for permits until after October 15th.

Analysis

In terms of zone, the usable worksheets break down as follows:

Zone	Number of Worksheets	Worksheets from Zone As a Percentage of Total Lots in Zone	New Construction Permits Were Issued	Additions for Which Building Permits Were Sought	Special Permit to Exceed FAR	Potential Projects, Existing Homes, or Cannot Tell
MR1	7	.2%	4	1		2
MR2	4	.4%	2		1	1
MR unknown	1					1
SR1	12	.8%	6			6
SR2	33	.4%	17	4	2*	11
SR3	15	.2%	8			7

**One of these withdrew upon learning their addition could be built as-of-right after October 15th.*

As shown above, the overwhelming majority of the worksheets represent new construction on lots where the previous residence was demolished, with far fewer worksheets for additions.

In terms of FAR limits, the worksheets broke down as follows:

	Over FAR in Both Scenarios	Under or At FAR in Both Scenarios	Under or At FAR Before Oct. 15 th ; Over New FAR Limit	Over FAR Before Oct. 15 th ; Under New FAR Limit	Total
MR1	1	1	4		7
MR2	1	3			4
MR unknown	1				1
SR1		6	5		11
SR2		15	16	1	32
SR3	2	7	6		15
Total	5	32	31	1	69

In many cases, the worksheets were prepared by those seeking demolition and building permits to construct new homes designed to maximize gross floor area under the previous FAR regulations (typically using the FAR bonus, and often built to FAR limits, so that a future addition could not be made as-of-right). In some cases, these homes would exceed new FAR limits. It should be recognized that these houses were designed explicitly to meet the old FAR regulations; it is possible that under the new regulations, different design decisions might be made that would allow additional floor area that would not count toward FAR. These design decisions might include different siting or grading to eliminate mass below the first story or less steep roof slopes to eliminate area above the second story. Whether these designs are desirable or not, and whether they will actually occur, is unknown at this point; but it does appear that a different arrangement of mass might produce different results going forward.

Of all the elements that now count toward gross floor area but did not previously, such as area above the second story, mass below first story, and detached garages and other buildings, the element that appears to most frequently increase gross floor area from the old to new measurement is area above the second story. However, this was not universally true, and in some cases mass below grade or a garage alone, or a combination of elements, changed the calculation.

The Planning and Inspectional Services departments will continue to collect FAR worksheets. As winter approaches, we anticipate fewer applications for building permits, though we also expect to see more applications from those who will gain as-of-right building potential under the new regulations.

Department of Planning and Development

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**PUBLIC HEARING OF THE ZONING AND PLANNING
COMMITTEE, OCTOBER 24, 2011**

MIXED-USE CENTERS ELEMENT

**#26-11(2), PLANNING AND DEVELOPMENT BOARD SUBMITTING IN
ACCORDANCE WITH SECTION 7-2 OF THE CITY CHARTER AN
AMENDMENT TO THE 2007 NEWTON COMPREHENSIVE PLAN TO
CREATE A NEW MIXED-USE CENTERS ELEMENT TO BE NUMBERED
SECTION 3.A IN THE COMPREHENSIVE PLAN AND TO INCLUDE A
VISION AND GUIDANCE FOR THE DEVELOPMENT OR
REDEVELOPMENT OF LARGE MIXED-USE CENTERS.**

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and Recommendations

Revision Process

- Working meetings involved Ald. Lisle Baker, Chairman Phil Herr, and Candace Havens, Director of Planning and Development
- Addressed specific concerns expressed during the public hearing last month
- Revised draft is a consensus document

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Major Revisions

- Major revisions focused on:
 - General clarity
 - Applicability/location
 - Housing
 - Finance
 - Interpretation/process

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Section 1: Vision

- **Added:**
 - Emphasizes location of mixed-use centers in existing commercial areas
 - States that the proposed mixed-use approach is a departure from historical approach towards separating uses
- **Revised:**
 - Bullets reworded to focus on areas with existing commercial uses and adequate transportation
- **Removed:**
 - Reference to need for existing housing deleted

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Section 2: Strategy

- **Removed:**
 - Reference to 'according with *Comp. Plan*'
- **Revised:**
 - Paragraph Spacing
 - Language of implementation bullets
- **Added:**
 - Clarification of implementation process

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Section 3: Design

- (Actions) Revised:
 - Specific examples of design guidelines moved to footnotes
 - Reference to interpretation for other sites moved to footnotes

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Section 4: Transportation

- No Major Changes

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Section 5: Housing

- **Removed**
 - Adjacent residential areas no longer count toward the mixture of uses – though still integrated
 - Reference to loosened rules for home-business uses deleted

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Section 6: Finance

- (Actions) Revised:
 - Discussion of impact fees limited to existing possibilities and focus on clarifying mitigation in advance
 - New wording describing the desire for voluntary community benefit agreements

Mixed-Use Centers Element

Revision Process

Major Revisions

Discussion and
Recommendations

Section 7: Process

- **Revised:**
 - Vision revised for clarity and to emphasize collaborative, participatory planning process
 - Revised last paragraph of Actions to remove language in favor of expansive interpretation

Mixed-Use Centers Element

Revision Process

Major Revisions

**Discussion and
Recommendations**

Discussion and Recommendations

- Recommend the adoption of the revised Draft Mixed-Use Element



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WORKING SESSION MEMORANDUM

Public Hearing Date: Sept 26th
ZAP Action Date: December 12th
BOA Action Date: December 19th
90 Day Expiration: December 24th

DATE: October 21, 2011

TO: Alderman Marcia T. Johnson, Chairman
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(2), The Planning and Development Board 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

BACKGROUND

Petition #26-11 proposes that the City's *Comprehensive Plan* be amended to include a Mixed-Use Centers Element to express a vision and provide guidance regarding the development of mixed-use centers. The draft was prepared by the Mayor's Mixed-Use Task Force, chaired by Philip Herr.

The Committee discussed the petition at working sessions on May 23, June 27, and July 12. The Planning Department prepared a revised draft in collaboration with Mr. Herr for a Public Hearing on

September 26. Following the hearing, the Committee raised several questions and asked the Planning Department, Mr. Herr, and Ald. Baker to work together to produce a revised draft. The group revised the Element (attached) to further strengthen and clarify it, as described below.

Areas of Concern Addressed in Current Draft

General clarity

The past several working sessions of the Zoning and Planning Committee have identified a number of areas where the Mixed-Use Centers Element might be clarified. A range of formatting, organizational, and language changes have been made in pursuit of this goal. In all cases, the intent has been to hold as closely to the original intent of the Mixed-Use Task Force as possible. In some places, notably page 3A-5, accessory ideas and examples have been moved into the footnotes to simplify the Element's core message without losing nuance and detail.

Applicability

Many questions during previous working sessions have focused on the applicability of the Element and the locations within the City where the type of mixed-use development it envisions could occur. This version has further refined the applicability of the Element to sites that are zoned Business and Mixed Use and where transportation infrastructure can support the new development without damage to surrounding neighborhoods. The majority of these changes were made in Section 1: Vision and Section 2: Strategy on pages 3A-1-3. Language in Section 7: Mixed-Use Guidance Process (page 3A-15), calling for the provisions of the Element to be applied in other contexts, has been deleted to keep the document within the original scope of the Mixed-Use Task Force.

Housing

The Element affirms that mixed-use development should contain a residential component (pages 3A-9-10), but that mixed-use developments should bear an appropriate relationship with surrounding neighborhoods. Ultimately, whether a mixed-use development must contain residential uses and how the development relates to surrounding residential areas, will be decided in the specific zoning changes and special permit approvals necessary for a project. In addition, on page 3A-10, the paragraph relating to lowering the requirements for home businesses was deleted. It was agreed that some of these ideas, in particular live/work artist lofts and the like, could be considered during future discussions over zoning changes.

Finance

In the finance section, the first major action bullet point has been substantially reworded to be less speculative about the possibility of future impact fees and more focused on currently actionable concepts, such as setting out clear expectations of mitigations before considering large developments. The last action bullet point has been expanded to more clearly state the concept of encouraging developers to offer community benefits (such as guarantees that they will hire local staff and construction workers or improved access to recreation facilities), called "community benefit agreements," in advance to satisfy the City's interests or concerns.

Discussion and Recommendation

The Planning and Development Department supports the newly revised Mixed-Use Centers Element. This draft even more clearly addresses the concerns expressed by the Committee and provides additional guidance on what Newton prefers for the design, location, and development of substantial new mixed-use centers. The Element is primarily focused on large-scale development and on laying out a vision for what makes for good mixed-use development.

The Mixed-Use Centers Element lays out a community vision around a particular topic, but does not affect immediate change. Following the adoption of the Element, the Board of Aldermen would need to take up how best to implement it, including considering changes to the Zoning Ordinance and Zoning Map. After that point, all new development proposals coming forward under those revised regulations would then still need to apply for and receive a special permit from the Board of Aldermen. The Element does not commit Newton to particular zoning or procedural changes, nor does it commit Newton to specific new developments.

The Planning and Development Department recommends the adoption of the Mixed-Use Centers Element in its current draft as representing a significant step toward defining appropriate mixed-use development of large commercial sites.

ATTACHMENT: Draft Mixed-Use Element

DRAFT MIXED-USE CENTERS AMENDMENT

Contents as most recently revised October 19, 2011
Formatted to be *Comprehensive Plan* Element 3A:

3A. MIXED-USE CENTERS

MIXED-USE CENTERS

*“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. As used in this Element, “mixed use” refers to two or more distinctly different uses, such as a commercial and a residential use, on the same parcel or located on one or more adjacent parcels in a business or mixed-use zone. New mixed-use 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. They can accommodate a share of the modest amount of commercial and residential growth that is anticipated and planned for by the City, as outlined elsewhere in this *Comprehensive Plan*. They can further benefit the City by adding both jobs and fiscal support. Because such mixed uses are, however, departures from the general model of Newton zoning that calls for a separation of uses to minimize their impacts on each other, careful guidance should ensure that the interests of the communities within which they are sited are given thoughtful consideration regarding the location, programming, and design of these new centers.

Applicability

“Mixed-use centers” are newly developed or redeveloped complexes of substantial size, perhaps a quarter-million square feet of floor area or more, preferably but not necessarily incorporating both residential and commercial uses. Mixed-use centers could be built on single parcels or adjacent parcels, either under common ownership or under separate but coordinated ownership. These new mixed-use centers are intended to complement rather than replace existing residential neighborhoods. This Element provides broad guidance for new mixed-use centers on topics such as design, housing, and transportation, as well as guidance regarding how the City, community, and property owners might work together towards sound project decisions.

The processes outlined in this Element are designed with large mixed-use centers in mind. However, most of the principles and goals of mixed-use development discussed below could apply well to smaller mixed-use developments, and can be helpful in later crafting of guidance for those smaller areas.

In a city as fully developed as Newton, new mixed-use centers will be appropriate only when located where:

- The general category of nonresidential use proposed (such as retail, office, or research) is also present and/or permitted within the zone at which the mixed-use project is to be sited.

- Access by both auto and public transport can be accommodated without damage to the character and functioning of the vicinity.

2. STRATEGY

To achieve the vision of integrated, vibrant new mixed-use centers, the City needs an approach that makes their creation not only possible, but also attractive to developers and community members. For it to occur, development of mixed-use centers on appropriate sites needs to be more appealing to developers than the alternative of single-use proposals. Since no wholly vacant site for large-scale mixed use appears to exist anywhere in the City, for mixed-use projects to occur such redevelopment also has to be more attractive than continuing the existing use. The initiative for large-scale mixed-use centers commonly comes from a proposal prepared by a developer who controls the subject property. Where multiple properties and ownership are involved, an initial vision could be prepared through a joint effort of City, the community and those having interests in those properties.

In either case, that proposal eventually needs to be sufficiently detailed to allow evaluation of its nature and impacts relative to the City's *Plan* and regulations. While that can be done today, improvements in three areas could make the whole mixed-use center review process work better for both developer and community:

- Zoning provisions could be better tailored for developments of the scale and kind proposed;
- A developed set of impact models and complementary measures to aid in understanding and evaluating the kind and degree of future project impacts; and
- A process for assessing the fit between the proposal and its location, which might involve collaboration among the interested parties, e.g., redeveloper, neighbor, and the City.

Note that even with these modifications, these processes may still not produce outcomes as smoothly as hoped unless project siting is carefully chosen initially. Newton's experience shows that the farther from residential areas a mixed-use project is located the clearer it will be that the project's community benefits are not being gained at the expense of the neighborhood, and the easier it will be to successfully achieve a broadly supported outcome.

Together, in appropriate cases, those improvements should facilitate early understanding by developers if a proposed project is likely to gain approval before significant resources are committed to specific designs. For people in nearby neighborhoods, this approach should provide predictability about the limits to potential impacts of development and a well-defined role in the process of managing the impacts of new development, going beyond the minimum requirements that would otherwise occur. In other words, in return for having the chance to mix uses on a site, a developer should get early information about its likely success. For the

affected neighbors, they should be able to have an early voice in shaping the proposal, as well as assurance that if protections beyond those customarily required are needed, they will be provided.

3. DESIGNING MIXED-USE CENTERS

Background

Unlike new mixed-use centers, Newton's villages grew incrementally over several centuries of profound change at the hands of many actors. Despite those and other differences between then and now, we would do well to learn from our existing village centers in the locating, programming, and designing of new mixed-use centers. One lesson learned is, 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 the details of how development should be shaped, but we should be firm about assuring consistency with those qualities that have historically proven critical to success in Newton's development.

Lessons learned from village centers include:

- Each village center is made up of a mix of uses, not simply one dominant one.
- The uses are not separated from each other but, rather, are mixed at fine grain.
- Those uses are easy to move within and among on foot.
- To a greater or lesser extent, the uses are often interrelated, to some degree serving or depending on each other, so that the adjacencies and integration are not just symbolic; they are functional and complementary.
- 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.

Vision

New mixed-use centers should create positive, integrated relationships with the surrounding neighborhoods. Sites should be visually and functionally integrated to increase their vitality. Shared spaces and streets are critical to that goal, which suggests new buildings should be oriented toward rather than turning their backs on them.

A mixture of dwellings, shops, offices, restaurants, and other uses can create activity at all hours of the day and on the weekends. This activity creates a vibrant pedestrian-scale place that is safe and desirable. By having some businesses, which provide nearby residents with jobs or services or other benefits the mixed-use area is integrated with the community. 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 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. Those uses are typically co-located at an accessible public transportation node. It is valuable both functionally and symbolically for the pathway from residences to public transportation to be an easy and pleasurable one.

While it is possible to develop new mixed-use centers that lack one or more of the above qualities, such development is less likely to achieve the vision that Newton seeks. Such developments should only be supported if they offer some alternative benefit through programming, design, or location.

The design of buildings and sites should place priority on achieving harmony and integration with their context, rather than just consistency with complex tables and numerical rules; ideally, zoning should enable that. The following goals should be primary in the shaping of building form and density:

- The shaping of buildings and spaces should be respectful of and compatible with the context within which the development is to be located, ideally having an organic consistency with its environs without mimicry or preclusion of well-designed differences in massing and scale.
 - Buildings that are taller than the surrounding urban fabric might be acceptable after considering such things as whether that height would cause adverse impacts from shadows or the blocking of views.
 - More building bulk may be acceptable where skillful design of building forms, rooflines, and architectural features lower the visual impact of the bulk.
 - More density or bulk than might be more acceptable than otherwise where the mix and integration of uses within a site lowers the impacts (e.g. traffic) on the surrounding neighborhood.
- 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 should be 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.

Actions

- Make efforts to develop guidance that is more concrete about the design of mixed-use centers. Guidance should be relevant to Newton’s existing character and acknowledge that 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 not just one, but rather, a set of design guidelines such as are commonly developed for communities or neighborhoods.

Even better, the guidance might include models that use measures for determining early if a proposal, after considering its location, site size, building size, and mix of uses and design is likely to be appropriate. Having such measurements 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.^{1,2}

¹ 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.).

² Where the above guidance also appears useful for development other than large-scale mixed-use centers, that guidance might be considered for incorporation into the Newton Zoning Ordinance through adoption of appropriate amendments 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.”

In other words, transportation infrastructure and adjacent land uses should be complementary and conjunctive such that new development need not dictate changes in the desired road infrastructure.

Vision

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 carpooling to rail transit, and 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.

Within limits, the mix of uses within the development can be managed to reduce the amount of traffic generated. Trip generation in relation to building floor area varies widely between residential 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. Carpooling, company parking protocols and vans, and incentives for employees and others to use public transportation can all contribute to auto trip reduction.

Finally, mixed-use center developments can create enough value to enable some level of mitigation of the traffic impacts that it causes. Neighbors will welcome that mitigation when it helps provide and enhance public transportation, removal of existing safety concerns or traffic flow impediments. Skillful traffic engineering at intersections can often greatly improve traffic movement with little physical change. However, choices get harder when given the proposed scale and mix of uses, no feasible alternative mode and demand management efforts are

adequate to offset trip volumes projected from the development unless supplemented with undesirable roadway change.

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 should not negatively impact the ease of travel by all persons, regardless of mode. The design and placement of access points and transportation mitigations related to the development should essentially “cause no harm” to community or environmental values. Quiet residential streets should not have to be turned into major arteries, even if doing so allows traffic to flow more easily than before. Accessibility for pedestrians or bicyclists should not be damaged in order to facilitate auto travel. New concrete sound barriers should not be needed to block traffic noise in order to accommodate a major new development.

In order to identify when the impacts of a potential project would be unacceptable, the City, community, and developer should collaborate on modeling potential impacts early in the development process, prior to too much expensive design work. These models should be developed in advance and might include “yellow flag” thresholds indicating levels of impacts that deserve special attention. For example, an increase in traffic volume above some percentage might justify a “yellow flag alert” since accommodating that increase *might* require street alterations or traffic engineering changes that could be damaging to the nearby quality of life.

Special attention is warranted when the impact models cross “yellow-flag” thresholds of concern. At that point, the community, developer and City should collaborate, possibly requiring revisions to the project’s programming, scale, transportation management efforts, street design so that, on balance, they are acceptable. “Yellow flags” should be seen as an opportunity for creative design, rather than hard barriers to 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 potential traffic impacts, mix of uses, and the need for integration with their surroundings:

- Mixed-use centers 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.
- 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.

- Where feasible, parking should be accommodated in structures, but surface parking should be allowed where it serves to protect pedestrians, improve the commercial experience, and not impede the flow of traffic.
- 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 themselves.

Actions

- Adopt a street design classification system and adopt guidelines for both that system and the street functional classification system, as called for in the Transportation and Mobility Element of this *Plan*. These classification systems should include design guidelines such as measurements of road width and configuration, lane placement, and pedestrian and bicycle features, making them responsive to changes in the urban fabric (e.g. village center or residential neighborhood) adjacent to the road. A more concrete, better developed street classification system will make the City's intentions for roadway design clear and provide guidance in assessing the appropriateness of street modifications that might be proposed in relation to large-scale mixed-use center development.
- Develop an in-City capacity for early collaborative concept-level estimation of the access and traffic impacts of major developments, better than back-of-the-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.
- Develop an initial version of the "yellow 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. 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.
- Explore the creation of a transportation mitigation fund, which could allow traffic mitigation resources to be used for a broad range of mitigating actions, not just specific traffic engineering alterations, to the extent allowed by law.³

³ Currently Massachusetts General Laws do not allow local municipalities to create general development impact fees.

5. HOUSING IN MIXED-USE CENTERS

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 centers is intended to chiefly serve young households and senior citizens, neither of which is well served by Newton's existing dominantly large-dwelling housing stock. Incentives can be used to encourage affordable housing in new mixed-use centers, potentially going beyond the inclusion mandated by Newton's zoning to support Newton's socio-economic diversity.

Third, incorporation of dwellings in a mixed-use center can make the spatial transitions between the development and any r 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. As a result, market forces may at times make it nearly impossible to simultaneously develop both residential and commercial uses at the same time, presenting a challenge to achieving the sought-after vibrancy.

Vision

Housing, either within or adjacent to and integrated with mixed-use centers, can provide a kind of vitality and fruitful contributions to the creation of wonderful places and an improved quality of life that centers without such housing may not be able to achieve. The presence of housing within the development affects considerations for location and design. The collaborative process and zoning revisions suggested by this Element should support the inclusion of housing and, where appropriate, integration with the surrounding neighborhood.

By incorporating housing, a mixed-use center can enhance the quality of life of our existing neighborhoods. To achieve vitality in the public space the residential component of a mixed-use center must be of an adequate scale. Housing in mixed-use centers should be an important and integrated element, not an after-thought or rule-satisfier. Likewise, housing should not be located in an isolated residential fragment in an unsupportive, non-residential context. The developer should work together with City staff and the community to determine what would be

an appropriate housing component. Where appropriate, explicit guidance on the desired residential component could be created through an area planning process or within zoning regulations, so long as it is recognized that the evolving real estate market may favor specific uses (i.e., retail, office, housing, and hotel) in different 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 nonresidential presence as discussed above.

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.

Residential parking demand created by mixed-use centers 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.

Welcoming and publicly accessible open space is essential as is some amount of reasonably located open space for use exclusively by residents and their guests. Innovative ways of providing open space such as green terraces and roofs should be encouraged in meeting this need.

It is important that the type of housing included in mixed-use centers helps to address needs not being well-served by the existing stock of housing. A current example is the need for housing suitable for seniors at most income levels who are seeking to downsize 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.
- Shape mixed-use center zoning to serve the City's housing needs regarding such considerations as dwelling types, size, accessibility and affordability, as appropriate in that

context. Zoning should also encourage integration between mixed-use centers and surrounding residential areas, and be sensitively designed to protect those areas.

6. FINANCE AND MIXED-USE CENTERS

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 are 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, 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 may compete with existing businesses so that its net impact on revenue may be substantially lower than its gross impact. On the other hand, more business development could strengthen existing businesses. For example, some businesses attract other related businesses or support existing ones with their purchases, creating a larger than expected increase in revenues. 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 as regional. Nonresidents will generally hold new jobs located in Newton, and a large percentage of workers residing in Newton 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.

Vision

Business development plays an important role in supporting services for Newton residents. Commercial property taxes and fees help offset the costs of education, public safety, and infrastructure.

The types of residential uses that this *Plan* suggests for mixed-use centers will have a lower impact on City services per dwelling unit than Newton's average single-family residence. The market for housing in mixed-use centers will 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. In most cases this may mean that the tax revenue from smaller dwelling units balances out the costs of the school children they would house. Site-specific enrollment and fiscal impact studies should be made for any substantial mixed-use development proposal. In most cases, such studies are likely to document that the housing in mixed-use developments provides a modest net revenue contribution to the City.⁴

Creating new housing in mixed-use centers serves important City goals including creating vibrant places and increasing the availability of housing for households of all types and incomes. Fiscal benefits or impacts must be balanced with these and other City goals. Housing must be considered in balance with the potential revenue benefits of commercial development. The fiscal impact of housing should be considered on a site-by-site basis, taking into account the types of units proposed, the capacity of area schools, and expected taxable value.

Actions

- 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 participation. 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.

Quite apart from what the City does or does not do about mixed-use development, the City, if possible, should set out clear and reasonable expectations about the type of fiscal mitigation it expects *before* it considers large developments. What share of the costs of mitigating various off-site impacts will developers be expected to carry, and what share will they not?

⁴ Page 10-9 of this *Comprehensive Plan* contains a one-page summary of the basis for that expectation, which also is supported by evidence from impact assessments done for past proposals and in some cases the careful monitoring of the accuracy of those analyses.

- Develop modeling and procedures to facilitate early collaborative City/developer/ community projections of the fiscal impacts of the proposed development upon the City. This step would serve to integrate other collaborative efforts that have been called for above, including traffic analyses, school impact analyses, and others.

Fiscal consequences are properly a significant consideration regarding major development, whether mixed-use or not. It is standard practice to model fiscal impacts for large developments. However, such projections typically lack credibility among those who oppose the project unless community members are themselves involved in creating the projections. Newton should create a system that gives all parties a hand in the analysis, sharing the effort, and hopefully sharing confidence in the outcome. The City 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.

- The scale and diversity of uses within large mixed-use developments make their developers singularly likely to be interested in connecting their development and its interests with potentially beneficial community interests. For that reason, a mixed-use project could be viewed not only as a business opportunity for the developer, but as a correlative societal opportunity, broadly defined, for the City.
- Developers could be asked not only to mitigate expected harm; but also to provide service and skills which, for example, might improve the opportunities for Newton’s low- to moderate-income population. One means where that might occur could involve “community benefit agreements,” which should be explored in the mixed-use context. Community benefit agreements are a means through which a developer, the City, and community organizations or others can join efforts to satisfy any of a number of interests, such as potential worker job training and placement, arrangement for facilities such as child care centers, matching housing needs and housing produced, and improving access to recreation facilities.

7. MIXED-USE GUIDANCE PROCESS

Background

Mixed-use centers can already be created under the City’s existing zoning, and there is every reason to expect that upon their completion such developments will be of benefit for the City. This amendment to the *Newton Comprehensive Plan* is intended to make the City’s intentions about such developments clearer, to encourage the 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 for mixed-use developments would 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 its benefits 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.

Vision

Future mixed-use development should have specific guidance either from a participatory planning process organized by the City and a neighborhood group or from a collaboration among the City, the community, and the developer in response to a specific initial proposal by the developer.

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. It would be helpful 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, such as design, schools, and taxes; and not only agreement among technicians, but also including members of the public.

In the past, well-informed dialog about impacts has largely focused on traffic impacts and involved consultants to the developer, City staff, consultants to the City, and MassDOT engineers. The results of these discussions have often not been persuasive for many of the parties that have been concerned about such developments. As a result, for example, there may be no public agreement on the likely scale of traffic impacts or even a range of impacts, let alone agreement on appropriate mitigations.

The need for project-specific relief 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.

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. The preceding sections describe several areas for the creation of impact measurements and “yellow-flag” thresholds.
- Develop a way to organize the data that the City carefully collects, and employ this data to reduce 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. In crafting this zoning, recognize that different zoning strategies may be necessary for different sites. Revisions to our Planned Mixed Business Development (PMBD) provisions would build on what already exists, enabling relatively prompt adoption of change. Other alternatives would include a wholly new “planned development” approach or revisions to existing Business and Mixed-Use district zoning.

It is critically important that the chosen approach separates the provisions that are intended to apply to all mixed use center proposals from those provisions that quite reasonably should differ from location to location, thus assuring uniformity in the process of review and approval and in certain substantive rules, such as basic locational ones, while allowing there to be differences in the other substantive requirements in response to differences in location and project nature. Site-specific rules regarding an approved concept plan and a set of unique use, dimensional, and parking requirements would be recorded in the aldermen’s approval documents, not in the text of the Ordinance.

That approach reflects the reality of how these decisions really get made, and it facilitates shaping unique solutions for these rare but widely consequential proposals to the context of unique sites, and not limiting solutions to zoning rules created for a different location.

- 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.



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Candace Havens
Director

MEMORANDUM

DATE: October 25, 2011

TO: Alderman Scott Lennon, President
Members of the Board of Aldermen

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

RE: #26-11(2), The Planning and Development Board 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:

Planning and Development Board
Marie Lawlor, Assistant City Solicitor

OVERVIEW OF MIXED-USE ELEMENT

The Mixed-Use Element is a proposed amendment to the *Comprehensive Plan* prepared by the Mayor's Mixed-Use Task Force. The Task Force, chaired by Philip Herr, worked over the summer of 2010 to develop and draft the Element, which was heard before the Planning and Development Board before its review by the Zoning and Planning Committee.

Over the summer and fall of 2011, the Zoning and Planning Committee held four working sessions and a public hearing on the draft Mixed -Use Centers Element. In response to questions raised by members of the Committee, the Planning Department staff worked with Chairman Phil Herr and Alderman Lisle Baker to clarify its substance and intent and produce the final consensus document (attached). The

changes from earlier versions primarily addressed questions of applicability, relevance, specific versus general vision, implementation, and impact modeling.

Newton's existing *Comprehensive Plan* recommends mixed uses in village commercial centers, particularly adjacent to transit services. However, the *Plan* provides little detail on the vision for mixed-use development in Newton and no explicit guidance on how mixed-use development should be applied to large sites. Thus, the Mixed-Use Element amendment was written to clarify the City's intentions for mixed-use centers and to guide future developments on its larger sites. The Mixed-Use Element would be added after the existing Land Use Element (Section 3), and would be labeled Section 3A. No other parts of the *Comprehensive Plan* would be altered.

The Elements that make up the *Comprehensive Plan*, including the Mixed-Use Centers Element, if adopted, lay out a community vision around a particular topic, but do not affect immediate practical changes. The Element does not commit Newton to particular zoning or procedural changes, nor does it commit Newton to specific new developments. Following adoption of the Element, the Board of Aldermen would need to consider how best to implement it, including possible changes to the Zoning Ordinance and Zoning Map.

As described in the draft Element, good mixed-use development should reflect the positive qualities of a village center by combining commerce, residences, and public amenities that are integrated into the surroundings, thus creating places where people can live, work, and shop. The Element lays out a strategy for achieving this vision centered on making mixed-use development more attractive to developers than single-use development, making better use of under-utilized land, and ensuring that proposed developments are responsive to City goals. To implement these goals, for individual sites, the Element recommends the City:

1. Create of a detailed vision and plan for the particular site or area of the City, originating either with the developer or through a City-led community visioning process
2. Adopt zoning provisions better tailored for developments of this scale and kind
3. Develop a set of models and measures to assist all parties in understanding and evaluating the levels of various types of project impacts as early as possible
4. Create a collaborative process to engage the community in assessing the fit between the location and the proposal

The Planning Department supports the vision and approach suggested in the Mixed-Use Centers Element¹ and recommends its adoption.

ATTACHMENT: Draft Mixed-Use Element

¹ For a more detailed discussion of the vision, principles, and goals of the draft Element, see the Planning Department memorandum dated June 24. For a detailed discussion of the issues surrounding implementing the Element's vision of mixed-use development, see the Planning Department memorandum dated July 9. The memorandum accompanying the public hearing is dated September 26 and the final working session memorandum is dated October 21.

MIXED-USE CENTERS AMENDMENT

Contents as most recently revised October 26, 2011
Formatted to be *Comprehensive Plan* Element 3A:

3A. MIXED-USE CENTERS

MIXED-USE CENTERS

*“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. As used in this Element, “mixed use” refers to two or more distinctly different uses, such as a commercial and a residential use, on the same parcel or located on one or more adjacent parcels in a business or mixed-use zone. New mixed-use 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. They can accommodate a share of the modest amount of commercial and residential growth that is anticipated and planned for by the City, as outlined elsewhere in this *Comprehensive Plan*. They can further benefit the City by adding both jobs and fiscal support. Because such mixed uses are, however, departures from the general model of Newton zoning that calls for a separation of uses to minimize their impacts on each other, careful guidance should ensure that the interests of the communities within which they are sited are given thoughtful consideration regarding the location, programming, and design of these new centers.

Applicability

“Mixed-use centers” are newly developed or redeveloped complexes of substantial size, perhaps a quarter-million square feet of floor area or more, preferably but not necessarily, incorporating both residential and commercial uses. Mixed-use centers could be built on single parcels or adjacent parcels, either under common ownership or under separate but coordinated ownership. These new mixed-use centers are intended to complement rather than replace existing residential neighborhoods. This Element provides broad guidance for new mixed-use centers on topics such as design, housing, and transportation, as well as guidance regarding how the City, community, and property owners might work together towards sound project decisions.

The processes outlined in this Element are designed with large mixed-use centers in mind. However, most of the principles and goals of mixed-use development discussed below could apply well to smaller mixed-use developments, and can be helpful in later crafting of guidance for those smaller areas.

In a city as fully developed as Newton, new mixed-use centers will be appropriate only when located where:

- The general category of nonresidential use proposed (such as retail, office, or research) is also present and/or permitted within the zone at which the mixed-use project is to be sited.
- Access by both auto and public transport can be accommodated without damage to the character and functioning of the vicinity.

2. STRATEGY

To achieve the vision of integrated, vibrant new mixed-use centers, the City needs an approach that makes their creation not only possible, but also attractive to developers and community members. For it to occur, development of mixed-use centers on appropriate sites needs to be more appealing to developers than the alternative of single-use proposals. Since no wholly vacant site for large-scale mixed use appears to exist anywhere in the City, for mixed-use projects to occur such redevelopment also has to be more attractive than continuing the existing use. The initiative for large-scale mixed-use centers commonly comes from a proposal prepared by a developer who controls the subject property. Where multiple properties and ownership are involved, an initial vision could be prepared through a joint effort of City, the community and those having interests in those properties.

In either case, that proposal eventually needs to be sufficiently detailed to allow evaluation of its nature and impacts relative to the City's *Plan* and regulations. While that can be done today, improvements in three areas could make the whole mixed-use center review process work better for both developer and community:

- Zoning provisions could be better tailored for developments of the scale and kind proposed;
- A developed set of impact models and complementary measures to aid in understanding and evaluating the kind and degree of future project impacts; and
- A process for assessing the fit between the proposal and its location, which might involve collaboration among the interested parties, e.g., redeveloper, neighbors, and the City.

Note that even with these modifications, these processes may still not produce outcomes as smoothly as hoped unless project siting is carefully chosen initially. Newton's experience shows that the farther from residential areas a mixed-use project is located the clearer it will be that the project's community benefits are not being gained at the expense of the neighborhood, and the easier it will be to successfully achieve a broadly supported outcome.

Together, in appropriate cases, those improvements should facilitate early understanding by developers if a proposed project is likely to gain approval before significant resources are committed to specific designs. For people in nearby neighborhoods, this approach should provide predictability about the limits to potential impacts of development and a well-defined role in the process of managing the impacts of new development, going beyond the minimum requirements that would otherwise occur. In other words, in return for having the chance to mix uses on a site, a developer should get early information about its likely success. For the affected neighbors, they should be able to have an early voice in shaping the proposal and be assured that their concerns will be seriously addressed.

3. DESIGNING MIXED-USE CENTERS

Background

Unlike new mixed-use centers, Newton's villages grew incrementally over several centuries of profound change at the hands of many actors. Despite those and other differences between then and now, we would do well to learn from our existing village centers in the locating, programming, and designing of new mixed-use centers. One lesson learned is, 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 the details of how development should be shaped, but we should be firm about assuring consistency with those qualities that have historically proven critical to success in Newton's development.

Lessons learned from village centers include:

- Each village center is made up of a mix of uses, not simply one dominant one.
- The uses are not separated from each other but, rather, are mixed at fine grain.
- Those uses are easy to move within and among on foot.
- To a greater or lesser extent, the uses are often interrelated, to some degree serving or depending on each other, so that the adjacencies and integration are not just symbolic; they are functional and complementary.
- 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.

Vision

New mixed-use centers should create positive, integrated relationships with the surrounding neighborhoods. Sites should be visually and functionally integrated to increase their vitality. Shared spaces and streets are critical to that goal, which suggests new buildings should be oriented toward rather than turning their backs on them.

A mixture of dwellings, shops, offices, restaurants, and other uses can create activity at all hours of the day and on the weekends. This activity creates a vibrant pedestrian-scale place that is safe and desirable. By having some businesses, which provide nearby residents with jobs or services or other benefits the mixed-use area is integrated with the community. 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 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. Those uses are typically co-located at an accessible public transportation node. It is valuable both functionally and symbolically for the pathway from residences to public transportation to be an easy and pleasurable one.

While it is possible to develop new mixed-use centers that lack one or more of the above qualities, such development is less likely to achieve the vision that Newton seeks. Such developments should only be supported if they offer some alternative benefit through programming, design, or location.

The design of buildings and sites should place priority on achieving harmony and integration with their context, rather than just consistency with complex tables and numerical rules; ideally, zoning should enable that. The following goals should be primary in the shaping of building form and density:

- The shaping of buildings and spaces should be respectful of and compatible with the context within which the development is to be located, ideally having an organic consistency with its environs without mimicry or preclusion of well-designed differences in massing and scale.
 - Buildings that are taller than the surrounding urban fabric might be acceptable after considering such things as whether that height would cause adverse impacts from shadows or the blocking of views.
 - More building bulk may be acceptable where skillful design of building forms, rooflines, and architectural features lower the visual impact of the bulk.
 - More density or bulk than might be more acceptable than otherwise where the mix and integration of uses within a site lowers the impacts (e.g. traffic) on the surrounding neighborhood.
- 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 should be 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.

Actions

- Make efforts to develop guidance that is more concrete about the design of mixed-use centers. Guidance should be relevant to Newton’s existing character and acknowledge that 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 not just one, but rather, a set of design guidelines such as are commonly developed for communities or neighborhoods.

Even better, the guidance might include models that use measures for determining early if a proposal, after considering its location, site size, building size, and mix of uses and design is likely to be appropriate. Having such measurements 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.^{1,2}

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.”

In other words, transportation infrastructure and adjacent land uses should be complementary and conjunctive such that new development need not dictate changes in the desired road infrastructure.

¹ 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.).

² Where the above guidance also appears useful for development other than large-scale mixed-use centers, that guidance might be considered for incorporation into the Newton Zoning Ordinance through adoption of appropriate amendments by the Board of Aldermen.

Vision

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 carpooling to rail transit, and 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.

Within limits, the mix of uses within the development can be managed to reduce the amount of traffic generated. Trip generation in relation to building floor area varies widely between residential 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. Carpooling, company parking protocols and vans, and incentives for employees and others to use public transportation can all contribute to auto trip reduction.

Finally, mixed-use center developments can create enough value to enable mitigation of the traffic impacts that it causes. Neighbors will welcome that mitigation when it helps provide and enhance public transportation, removal of existing safety concerns or traffic flow impediments. Skillful traffic engineering at intersections can often greatly improve traffic movement with little physical change. However, choices get harder when given the proposed scale and mix of uses, no feasible alternative mode and demand management efforts are adequate to offset trip volumes projected from the development unless supplemented with undesirable roadway change.

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 should not negatively impact the ease of travel by all persons, regardless of mode. The design and placement of access points and transportation mitigations related to the development should essentially “cause no harm” to community or environmental values. Quiet residential streets should not have to be turned into major arteries, even if doing so allows traffic to flow more easily than before. Accessibility for pedestrians or bicyclists should not be damaged in order to facilitate auto travel. New concrete sound barriers should not be needed to block traffic noise in order to accommodate a major new development.

In order to identify when the impacts of a potential project would be unacceptable, the City, community, and developer should collaborate on modeling potential impacts early in the development process, prior to too much expensive design work. These models should be developed in advance and might include “yellow flag” thresholds indicating levels of impacts that deserve special attention. For example, an increase in traffic volume above some percentage might justify a “yellow flag alert” since accommodating that increase *might* require street alterations or traffic engineering changes that could be damaging to the nearby quality of life.

Special attention is warranted when the impact models cross “yellow-flag” thresholds of concern. At that point, the community, developer and City should collaborate, possibly requiring revisions to the project’s programming, scale, transportation management efforts, street design so that, on balance, they are acceptable. “Yellow flags” should be seen as an opportunity for creative design, rather than hard barriers to 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 potential traffic impacts, mix of uses, and the need for integration with their surroundings:

- Mixed-use centers 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.
- 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.
- Where feasible, parking should be accommodated in structures, but surface parking should be allowed where it serves to protect pedestrians, improve the commercial experience, and not impede the flow of traffic.
- 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 themselves.

Actions

- Adopt a street design classification system and adopt guidelines for both that system and the street functional classification system, as called for in the Transportation and Mobility Element of this *Plan*. These classification systems should include design guidelines such as measurements of road width and configuration, lane placement, and pedestrian and bicycle features, making them responsive to changes in the urban fabric (e.g. village center or residential neighborhood) adjacent to the road. A more concrete, better developed street classification system will make the City’s intentions for roadway design clear and provide guidance in assessing the appropriateness of street modifications that might be proposed in relation to large-scale mixed-use center development.
- Develop an in-City capacity for early collaborative concept-level estimation of the access and traffic impacts of major developments, better than back-of-the-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.

Vision

Housing, either within or adjacent to and integrated with mixed-use centers, can provide a kind of vitality and fruitful contributions to the creation of wonderful places and an improved quality of life that centers without such housing may not be able to achieve. The presence of housing within the development affects considerations for location and design. The collaborative process and zoning revisions suggested by this Element should support the inclusion of housing and, where appropriate, integration with the surrounding neighborhood.

By incorporating housing, a mixed-use center can enhance the quality of life of our existing neighborhoods. To achieve vitality in the public space, the residential component of a mixed-use center must be of an adequate scale. Housing in mixed-use centers should be an important and integrated element, not an after-thought or rule-satisfier. Likewise, housing should not be located in an isolated residential fragment in an unsupportive, non-residential context. The developer should work together with City staff and the community to determine what would be an appropriate housing component. Where appropriate, explicit guidance on the desired residential component could be created through an area planning process or within zoning regulations, so long as it is recognized that the evolving real estate market may favor specific uses (i.e., retail, office, housing, and hotel) in different 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 nonresidential presence as discussed above.

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.

Residential parking demand created by mixed-use centers 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.

Welcoming and publicly accessible open space is essential as is some amount of reasonably located open space for use exclusively by residents and their guests. Innovative ways of providing open space such as green terraces and roofs should be encouraged in meeting this need.

It is important that the type of housing included in mixed-use centers helps to address needs not being well-served by the existing stock of housing. A current example is the need for housing suitable for seniors at most income levels who are seeking to downsize 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.
- Shape mixed-use center zoning to serve the City's housing needs regarding such considerations as dwelling types, size, accessibility and affordability, as appropriate in that context. Zoning should also encourage integration between mixed-use centers and residential areas, and be sensitively designed to protect those areas.

6. FINANCE AND MIXED-USE CENTERS

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 are 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, 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 may compete with existing businesses so that its net impact on revenue may be substantially lower than its gross impact. On the other hand, more business development could strengthen existing businesses. For example, some businesses attract other related businesses or support existing ones with their purchases, creating a larger than expected increase in revenues. 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 as regional. Nonresidents will generally hold new jobs located in Newton, and a large percentage of workers residing in Newton 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.

Vision

Business development plays an important role in supporting services for Newton residents. Commercial property taxes and fees help offset the costs of education, public safety, and infrastructure.

The types of residential uses that this *Plan* suggests for mixed-use centers will have a lower impact on City services per dwelling unit than Newton’s average single-family residence. The market for housing in mixed-use centers will 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. In most cases this may mean that the tax revenue from smaller dwelling units balances out the costs of the school children they would house. Site-specific enrollment and fiscal impact studies should be made for any substantial mixed-use development proposal. In most cases, such studies are likely to document that the housing in mixed-use developments provides a modest net revenue contribution to the City.⁴

Creating new housing in mixed-use centers serves important City goals including creating vibrant places and increasing the availability of housing for households of all types and incomes. Fiscal benefits or impacts must be balanced with these and other City goals. Housing must be considered in balance with the potential revenue benefits of commercial development. The fiscal impact of housing should be considered on a site-by-site basis, taking into account the types of units proposed, the capacity of area schools, and expected taxable value.

Actions

- 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 participation. 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.

Quite apart from what the City does or does not do about mixed-use development, the City, if possible, should set out clear and reasonable expectations about the type of fiscal mitigation it

⁴ Page 10-9 of this *Comprehensive Plan* contains a one-page summary of the basis for that expectation, which also is supported by evidence from impact assessments done for past proposals and in some cases the careful monitoring of the accuracy of those analyses.

expects *before* it considers large developments. What share of the costs of mitigating various off-site impacts will developers be expected to carry, and what share will they not?

- Develop modeling and procedures to facilitate early collaborative City/developer/ community projections of the fiscal impacts of the proposed development upon the City. This step would serve to integrate other collaborative efforts that have been called for above, including traffic analyses, school impact analyses, and others.

Fiscal consequences are properly a significant consideration regarding major development, whether mixed-use or not. It is standard practice to model fiscal impacts for large developments. However, such projections typically lack credibility among those who oppose the project unless community members are themselves involved in creating the projections. Newton should create a system that gives all parties a hand in the analysis, sharing the effort, and hopefully sharing confidence in the outcome. The City 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.

- The scale and diversity of uses within large mixed-use developments make their developers singularly likely to be interested in connecting their development and its interests with potentially beneficial community interests. For that reason, a mixed-use project could be viewed not only as a business opportunity for the developer, but as a correlative societal opportunity, broadly defined, for the City.
- Developers could be asked not only to mitigate expected harm; but also to provide service and skills which, for example, might improve the opportunities for Newton's low- to moderate-income population. One means where that might occur could involve "community benefit agreements," which should be explored in the mixed-use context. Community benefit agreements are a means through which a developer, the City, and community organizations or others can join efforts to satisfy any of a number of interests, such as potential worker job training and placement, arrangement for facilities such as child care centers, matching housing needs and housing produced, and improving access to recreation facilities.

7. MIXED-USE GUIDANCE PROCESS

Background

Mixed-use centers can already be created under the City's existing zoning, and there is every reason to expect that upon their completion, such developments will be of benefit for the City. This amendment to the *Newton Comprehensive Plan* is intended to make the City's intentions about such developments clearer, to encourage the 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 for mixed-use developments would 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 its benefits 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.

Vision

Future mixed-use development should have specific guidance either from a participatory planning process organized by the City and a neighborhood group or from a collaboration among the City, the community, and the developer in response to a specific initial proposal by the developer.

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. It would be helpful 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, such as design, schools, and taxes; and not only agreement among technicians, but also including members of the public.

In the past, well-informed dialog about impacts has largely focused on traffic impacts and involved consultants to the developer, City staff, consultants to the City, and MassDOT engineers. The results of these discussions have often not been persuasive for many of the parties that have been concerned about such developments. As a result, for example, there may be no public agreement on the likely scale of traffic impacts or even a range of impacts, let alone agreement on appropriate mitigations.

The need for project-specific relief 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.

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. The preceding sections describe several areas for the creation of impact measurements and "yellow-flag" thresholds.
- Develop a way to organize the data that the City carefully collects, and employ this data to reduce 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. In crafting this zoning, recognize that different zoning strategies may be necessary for different sites. Revisions to our Planned Mixed Business Development (PMBD) provisions would build on what already exists, enabling relatively prompt adoption of change. Other alternatives would include a wholly new “planned development” approach or revisions to existing Business and Mixed-Use district zoning.

It is critically important that the chosen approach separates the provisions that are intended to apply to all mixed use center proposals from those provisions that quite reasonably should differ from location to location, thus assuring uniformity in the process of review and approval and in certain substantive rules, such as basic locational ones, while allowing there to be differences in the other substantive requirements in response to differences in location and project nature. Site-specific rules regarding an approved concept plan and a set of unique use, dimensional, and parking requirements would be recorded in the aldermen’s approval documents, not in the text of the Ordinance.

That approach reflects the reality of how these decisions really get made, and it facilitates shaping unique solutions for these rare but widely consequential proposals to the context of unique sites, and not limiting solutions to zoning rules created for a different location.

- 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.

26-11(2)
 Received @ 10/24/11
 ZAR Mty

Mixed-Use Element – Table of Major Revisions, October 24, 2011

Page	Original	Revised	Notes
3A-1	As used in this Element, "mixed use" refers to two or more distinctly different uses on the same parcel or located on adjacent or nearby parcels. ... Careful guidance should ensure that the interests of the communities within which they are sited are given thoughtful consideration regarding the location, programming, and design of these new centers.	As used in this Element, "mixed use" refers to two or more distinctly different uses, such as a commercial and a residential use, on the same parcel or located on one or more adjacent parcels in a business or mixed-use zone. ... Because such mixed uses are, however, departures from the general model of Newton zoning that calls for a separation of uses to minimize their impacts on each other, careful guidance should ensure that the interests of the communities within which they are sited are given thoughtful consideration regarding the location, programming, and design of these new centers.	Clearly limits mixed use developments to business zones Calls out a departure from past practice
3A-1 3A-2	In a city as fully developed as Newton, new mixed-use centers will be appropriate only when located where: <ul style="list-style-type: none"> • The general category of nonresidential use proposed (such as retail, office, or research) is also present and/or permitted in the vicinity; • Housing already exists and/or is permitted in the vicinity; and • Access by both auto and public transport can be accommodated without serious damage to the character and functioning of the vicinity. 	In a city as fully developed as Newton, new mixed-use centers will be appropriate only when located where: <ul style="list-style-type: none"> • The general category of nonresidential use proposed (such as retail, office, or research) is also present and/or permitted within the zone at which the mixed-use project is to be sited. • Access by both auto and public transport can be accommodated without damage to the character and functioning of the vicinity 	Limit to areas of existing commercial activity
3A-2	...Finally, such mixed-use development should be responsive to the City's Comprehensive Plan, zoning, and other adopted guidance, rather than requiring amendments to its plans and regulations to accommodate development proposals. The initiative for large-scale mixed-use centers commonly comes from a plan prepared by a developer who controls the property in question. Where multiple properties and ownership are involved, an initial vision could be prepared through a joint effort of City, the community and those having interests in those properties. In either case, that plan eventually needs to be sufficiently detailed to allow evaluation of its nature and impacts relative to the City's plans and regulations. While that can be done today, improvements in	...The initiative for large-scale mixed-use centers commonly comes from a proposal prepared by a developer who controls the subject property. Where multiple properties and ownership are involved, an initial vision could be prepared through a joint effort of City, the community and those having interests in those properties. In either case, that proposal eventually needs to be sufficiently detailed to allow evaluation of its nature and impacts relative to the City's Plan and regulations. While that can be done today, improvements in three areas could make the whole mixed-use center review process work better for both developer and community:	Clarifying

	three areas could make the whole mixed-use center review process work better for both developer and community:		
3A-2	<ul style="list-style-type: none"> • Zoning provisions better tailored for developments of this scale and kind; • A developed set of models and measures to assist all parties in understanding and evaluating the levels of various types of project impacts; and • A collaborative process for assessing the fit between the location and the proposal. 	<ul style="list-style-type: none"> • Zoning provisions could be better tailored for developments of the scale and kind proposed; • A developed set of impact models and complementary measures to aid in understanding and evaluating the kind and degree of future project impacts; and • A process for assessing the fit between the proposal and its location, which might involve collaboration among the interested parties, e.g., redeveloper, neighbor, and the City. 	Clarifying
3A-2 3A-3	Together, those improvements 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 the impacts of new development, going beyond the minimum requirements for public voice as stipulated in statutory law.	<p>Note that even with these modifications, these processes may still not produce outcomes as smoothly as hoped unless project siting is carefully chosen initially. Newton's experience shows that the farther from residential areas a mixed-use project is located the clearer it will be that the project's community benefits are not being gained at the expense of the neighborhood, and the easier it will be to successfully achieve a broadly supported outcome.</p> <p>Together, in appropriate cases, those improvements should facilitate early understanding by developers if a proposed project is likely to gain approval before significant resources are committed to specific designs. For people in nearby neighborhoods, this approach should provide predictability about the limits to potential impacts of development and a well-defined role in the process of managing the impacts of new development, going beyond the minimum requirements that would otherwise occur. In other words, in return for having the chance to mix uses on a site, a developer should get early information about its likely success. For the affected neighbors, they should be able to have an early voice in shaping the proposal, as well as assurance that if protections beyond those customarily required are needed, they will be provided.</p>	Clarifying with more detail
3A-5	<ul style="list-style-type: none"> • Make efforts to develop guidance that is more concrete about the design of mixed-use centers. Guidance should 	<ul style="list-style-type: none"> • Make efforts to develop guidance that is more concrete about the design of mixed-use centers. Guidance should 	Specific examples moved to footnotes

and be assured that concerns are addressed

	<p>be relevant to Newton's existing character and acknowledge that 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 not just one, but rather, a set of design guidelines such as are commonly developed for communities or neighborhoods.</p> <p>Even better, the guidance might include models that use measures for determining early if a proposal, after considering its location, site size, building size, and 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 <i>Santa Fe Architectural Design Review Handbook</i> (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).</p> <ul style="list-style-type: none"> Where the above guidance appears appropriate for development other than large-scale mixed-use centers, that guidance should be incorporated into Newton's Zoning Ordinance by adoption of the Board of Aldermen. 	<p>be relevant to Newton's existing character and acknowledge that 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 not just one, but rather, a set of design guidelines such as are commonly developed for communities or neighborhoods. Even better, the guidance might include models that use measures for determining early if a proposal, after considering its location, site size, building size, and mix of uses and design is likely to be appropriate. Having such measurements 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.^{1,2}</p> <p>¹ Much the same was done with great simplicity by the point system in the <i>Santa Fe Architectural Design Review Handbook</i> (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.).</p> <p>² Where the above guidance also appears useful for development other than large-scale mixed-use centers, that guidance might be considered for incorporation into the Newton Zoning Ordinance through adoption of appropriate amendments by the Board of Aldermen.</p>	
3A-9	<p>...The collaborative process and zoning revisions suggested by this Element should support the inclusion of housing or integration with surrounding neighborhoods.</p> <p>By incorporating or being integrated with surrounding housing, a mixed-use center can enhance the quality of life of our existing neighborhoods...</p>	<p>...The collaborative process and zoning revisions suggested by this Element should support the inclusion of housing and, where appropriate, integration with the surrounding neighborhood.</p> <p>By incorporating housing, a mixed-use center can enhance the quality of life of our existing neighborhoods....</p>	Removes language about counting residential areas toward mixed-use program
3A-10	Compliance with the usual rules for regulating business activity conducted within a dwelling should not be required, although alternative controls to assure an appropriate	(deleted)	Removes exception to home-business

	<p>ambiance for family living should apply. Such development might even allow “live/work” units combining both living and working space with flexibility in the allocation between uses over time.</p>		rules.
3A-10 3A-11	<ul style="list-style-type: none"> Shape mixed-use center zoning to serve the City’s housing needs, either on-site or in the adjacent neighborhoods. Zoning should also encourage integration between mixed-use centers and surrounding residential areas. 	<ul style="list-style-type: none"> Shape mixed-use center zoning to serve the City’s housing needs regarding such considerations as dwelling types, size, accessibility and affordability, as appropriate in that context. Zoning should also encourage integration between mixed-use centers and surrounding residential areas, and be sensitively designed to protect those areas. 	Clarify goals
3A-12	<ul style="list-style-type: none"> Clarify and document the City’s requirements regarding development-related impact fees and exactions. <p>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 participation. Massachusetts law generally does not allow 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.</p> <p>If the City establishes impact fee requirements at some point in the future, such fees should apply to all new large-scale development and not uniquely to mixed-use</p>	<ul style="list-style-type: none"> 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 participation. 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. <p>Quite apart from what the City does or does not do about mixed-use development, the City, if possible, should set out clear and reasonable expectations about the type of fiscal mitigation it expects <i>before</i> it considers large developments. What share of the costs of mitigating various off-site impacts will developers be expected to carry, and what share will they not?</p>	Discussion of impact fees

	<p>development. A fee applied only to mixed-use development would discourage new mixed-use development.</p> <p>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 <i>before</i> it considers large developments. What share of the costs of mitigating various off-site impacts will developers be expected to carry, and what share will they not?</p> <p>While at some level case-by-case <i>ad hoc</i> negotiation in such developments is helpful and inevitable for very large singular developments, but it may not be efficient or equitable for either the City or developers. The City should at least document its 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.</p>		
3A-13	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • The scale and diversity of uses within large mixed-use developments make their developers singularly likely to be interested in connecting their development and its interests with potentially beneficial community interests. For that reason, a mixed-use project could be viewed not only as a business opportunity for the developer, but as a correlative societal opportunity, broadly defined, for the City. • Developers could be asked not only to mitigate expected harm; but also to provide service and skills which, for example, might improve the opportunities for Newton's low- to moderate-income population. One means where that might occur could involve "community benefit agreements," which should be explored in the mixed-use context. Community benefit agreements are a means through which a developer, the City, and community 	<p>New way of phrasing community benefit agreements and other shared benefit opportunities</p>

		organizations or others can join efforts to satisfy any of a number of interests, such as potential worker job training and placement, arrangement for facilities such as child care centers, matching housing needs and housing produced, and improving access to recreation facilities.	
3A-14	Future mixed-use development should have specific guidance either from a participatory planning process organized by the City and a neighborhood group or from a collaboration among the City, the community, and the developer in response to a specific initial proposal by the developer. Publicly accessible models would be employed to predict and evaluate potential community impacts. Necessary permitting and, if required, adoption of zoning map and/or text amendments would follow those planning and assessing efforts. The entire approach should incorporate a clear collaborative process that gives a structured voice to the community.	Future mixed-use development should have specific guidance either from a participatory planning process organized by the City and a neighborhood group or from a collaboration among the City, the community, and the developer in response to a specific initial proposal by the developer.	Reduced emphasis on models and metrics
3A-15	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 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. 	Removes language in favor of expansive interpretation

Dear Colleagues,

The Zoning Reform Group (ZRG), established by the Board of Aldermen early this year, will present its work and recommendations to the City for a public conversation at the Senior Center. As you know, the ZRG was appointed by Mayor Warren from a long list of applicants, in collaboration with Board leadership. The ZRG has been meeting regularly since March; all meetings have been posted, recorded, and open to the public and have featured lively citizen engagement. We have enjoyed excellent staff support from the planning department, especially Chief Zoning Code Official Seth Zeren, Chief Planner Jen Molinsky—who also volunteers as a member—and Director Candace Havens.

Meeting agendas, notes, presentations, resources, and draft reports are available on the ZRG's website (newtonma.gov/Planning/zoning-reform-group.htm). The PowerPoint presentations provide very easy to digest background information on the history of zoning, its evolution in Newton, the diversity of zoning tools and techniques, and a video showing one method of restructuring (organizing, illustrating, clarifying) a zoning document.

ZRG held a public meeting in late July drawing over 30 folks in addition to the committee. There we received feedback on some early ideas from citizens divided into groups according to land use: residential/neighborhoods, commercial/business and institutional/natural resources. Since then we have picked up many "regulars", including representatives from the EDC, Newton Villages, the Chamber, LWV, Newton Housing Partnership, Newton Conservators, some of you—and many individual citizens. We have expanded our mailing list accordingly, and the expertise offered by that wider group has been extremely valuable to the work.

The ZRG has remained focused on its charge rather to provide a framework for reform and come to consensus on its recommendations. A copy of the ZRG's draft final report is attached. This report addresses both the organizational reforms and substantive reforms at the thematic level without proposing specific changes. The report recommends a three phase process for accomplishing these reforms and outlines the resources required. The organizational changes in Phase 1 will make the Ordinance easier to understand, administer and enforce. The substantive reforms recommended for Phase 2 will make the Ordinance better guide Newton's pattern of development and renewal so that can become an even better place to live.

I hope that you can join us:

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Zoning Reform Group – DRAFT Final Report

November 1, 2011 (version 4.1)

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Executive Summary

The Board of Aldermen created the Zoning Reform Group (ZRG) in the winter of 2010-11 in response to broad sentiment that Newton’s Zoning Ordinance is difficult to understand and administer and does not result in the best outcomes for the community. Mayor Warren and Board of Aldermen President Scott Lennon selected the members from a pool of applicants representing diverse perspectives and experiences with Newton’s Zoning Ordinance. The Group’s charge was to develop “a plan to reform Newton’s zoning code” including, but not limited to “determining long and short-term objectives, identifying funding options, researching best practices of communities that have undergone zoning reform, and identifying potential resources to assist in the process.”

Zoning reform is of critical importance to the future of Newton. The Zoning Ordinance guides new construction, redevelopment, and land use patterns by creating regulations, standards, and review processes that shape the City over the long term. The last comprehensive review and revision of Newton's Zoning Ordinance took place in 1987. Much has changed in Newton and the Greater Boston metropolitan area since then. An updated ordinance could help the City better respond to changing market pressures, guide new development, renew Newton’s village centers, and protect the City’s unique residential neighborhoods.

The ZRG recommends a comprehensive revision of Newton’s Zoning Ordinance to begin in less than a year and to be completed within three and a half years. The Group further recommends that such an effort consist of three phases: 1) reorganize the existing regulations to make the Ordinance more user-friendly, well-illustrated, and clear; 2) then a comprehensive rewrite of the Ordinance to incorporate policy changes that will channel growth to mixed-use areas, protect residential neighborhoods, and better reflect the goals of the City’s *Comprehensive Plan*, generally; and 3) allow one year to review before adjusting the new Ordinance.

I. Newton Zoning History and the Zoning Reform Group

At the turn of the 20th Century, many burgeoning industrial cities including Boston, New York, and Philadelphia were struggling to protect their historic character and public health in the face of growing populations, taller buildings, and noxious industrial activities. In 1920 Massachusetts enacted the Zoning Enabling Act, giving the right to regulate land use to Cities and Towns. Newton first adopted zoning in 1922. Initially zoning divided the City into five districts broadly separating out single-family residential areas from business and manufacturing areas.

Over the past 90 years, Newton's Zoning Ordinance has grown from 16 pages to approximately 125 pages, becoming more complex and specific. Much of this increased complexity reflects changes in Newton's built environment over those years. In 1922, Newton was still largely agricultural and thinly settled between its railroad villages; Newton today is a largely built-out City of approximately 85,000 people. New uses, increasing density, traffic, and a variety of public concerns led to more and more zoning regulations meant to allow property owners the "quiet enjoyment" of their land and protect them from nuisance or injury.

Newton completed a new *Comprehensive Plan* in 2007 and embraced its status as a "Green Community" in 2010. In continuing to adapt to the changing land use needs and challenges of a new century, Newton's zoning ordinance must adapt as well so that the two documents are congruent and the messages to the development community and citizens are consistent. A comprehensive revision of the Zoning Ordinance can support the use of new, greener building technology or the creation of smart-growth, mixed-use developments outlined in the City's guiding *Comprehensive Plan*. By making the Ordinance easier to use, residents and business owners will be able to spend less time and less money on professional support in navigating the development process and City staff will be freed from deciphering an outdated set of rules to work on long-range planning.

Reflecting this realization, in the winter of 2010-11, Mayor Setti Warren and the Board of Aldermen charged the Zoning Reform Group (ZRG) with the task of recommending long-term and short-term objectives, identifying funding options, researching best practices of communities that have undergone zoning reform, and identifying potential resources to assist in the process of Zoning Reform. The membership of the Zoning Reform Group includes experienced local land use attorneys, architects, a planner, and a developer—Jason Rosenberg, Marc Hershman, Terry Morris, Peter Kilborn, Steve Vona, and Jennifer Molinsky. Alderman Deborah Crossley serves as chair, with staff support from Jennifer Molinsky and Seth Zeren.

The ZRG met regularly over the spring and summer to consider the objectives of the *Comprehensive Plan*, the limitations of the existing Zoning Ordinance, the principles and goals for which a zoning reform effort should strive, and the process and mechanism by which that reform can be achieved. The meetings have been open to the public and well-attended by community members and aldermen. Three subcommittees were formed to focus on 1) commercial zoning; 2) residential zoning; and 3) open space, institutional, and public use zoning. The ZRG held a public workshop on July 27, 2011 with over 40 people in attendance, including ZRG members, Aldermen, and community members. The group held a second public workshop on November 3, 2011 to receive comments on the draft final recommendations. The ZRG concluded its deliberations with this Final Report, delivered to the Mayor and Board of Aldermen on November ____, 2011.

II. Principles for Newton's Zoning Ordinance

In its deliberations, the Zoning Reform Group identified the following essential principles for a reformed Zoning Ordinance. This report uses “principles” to describe what the Ordinance itself should be like and how it should function. These principles should be carried through all zoning changes, during a reform effort and after, and are woven through the more specific, outcome-oriented themes presented below. The ZRG recommends the following principles for zoning reform in Newton:

“The Zoning Ordinance should...”

- Be easy to use, administer, and enforce
- Be well-organized, indexed, and cross-referenced
- Use clear, precise, and modern language
- Be internally consistent
- Produce predictable, desired results
- Balance flexibility and predictability
- Support the vision expressed in the *Comprehensive Plan*

III. Themes for Zoning Reform

The Zoning Reform Group identified the following eleven major themes for zoning reform through its research, deliberation, and dialogue with citizens and City staff. Each of these themes represents a significant policy goal identified in the *Comprehensive Plan* that the ZRG believes the current Zoning Ordinance does not adequately support. Therefore, the changes necessary to achieve these goals will require significant changes to the Zoning Ordinance. The ZRG feels that by addressing each of these issues, the Zoning Ordinance and resulting development outcomes will more closely match the aspirations of the *Comprehensive Plan* and improve the quality of life in Newton. A reform effort may also need to look beyond the zoning ordinance itself and consider changes to historic preservation, conservation, fence, and other regulations in other chapters of the City Ordinances to achieve the themes below.

1. Better organize the Ordinance for ease of use

Newton's Zoning Ordinance is difficult both for professionals and lay citizens to interpret and use. Zoning reform should include modernizing the language of the Ordinance, reorganizing its sections for ease of use, and incorporating cross references and an index. Wherever possible, tables and illustrations should be used to make concepts or regulations clearer and easier to reference. All terminology should be defined in the “Definitions” section and then used consistently. Footnotes should be used for clarifications or cross references and not contain hidden regulations or exceptions. Similarly, definitions should not contain regulations and vice-versa. The Zoning Ordinance can make better use of the internet to make the Ordinance easier to access and digital formatting to communicate complex issues through graphics, links to related definitions, concepts, and tools. Lastly the reform process should address rules for the format of future amendments to ensure that new changes are integrated into the Ordinance without creating unnecessary complexity or confusion.

2. Simplify and streamline the permitting and review processes

Many desirable developments that accord with the *Comprehensive Plan* require special permit approvals before the Board of Aldermen, which is the special permit granting authority in the City. Special permits can involve significant staff time and, depending on the project, may require lengthy reviews. Because the Board is also an elected legislative body, some complain that members' political roles conflict with their quasi-judicial special permit granting authority.

Zoning reform should lower the administrative burden of permitting, streamline the process, and devolve some aspects of discretionary review to an administrative function and/or other boards or commissions. A simpler ordinance (theme 1) would help reduce the time required for staff zoning reviews and interpretations, as would reducing the need for special permits in some cases. The ZRG recommends studying what land uses or types of construction, currently allowed only by special permit, could be allowed by right (requiring no special reviews or permits other than possibly a building permit) and expanding the use of *de minimus* allowances for existing nonconformities, which allow some changes to properties that do not conform with zoning without a special permit. The description of the process of obtaining a special permit should be clarified and the criteria for granting a special permit updated. In addition, some minor special permits could be delegated to another group, such as the Zoning Board of Appeals or the Planning and Development Board or to administrative review, while reserving those major projects that have the potential to profoundly reshape Newton to the discretion of the full Board of Aldermen.

3. Recognize that each village center and commercial corridor is unique

Newton has long been a "city of villages," with important commercial corridors: Needham Street, Boylston Street (Route 9), and Washington Street. Newton's Zoning Ordinance currently treats most village commercial centers and commercial corridors with similar zoning districts and zoning requirements.

A zoning reform effort should recognize that each village center and commercial corridor is a unique place and requires more focused and individualized zoning. There is not a one size-fits-all solution to regulating development in Newton's commercial areas. The ZRG recommends the consideration of several methods for supporting this diversity, including creating new base zones, village overlay zones, and/or design guidelines.

4. Encourage mixed-use residential redevelopment of village centers

Vibrant village centers are the heart of Newton's quality of life. Over the decades, however, Newton's village commercial centers have lost density and key services as larger structures have been replaced with single-story retail buildings or parking lots and as offices have replaced upper-story residences. A renewal of the historic building fabric of multi-story, mixed-use buildings can accommodate the City's need for moderate growth and the population's need for diverse housing (theme 9) while remaining appropriate to the surrounding neighborhoods.

Zoning reform should allow appropriate mixed-use density to encourage this renewal. Commercial uses with shorter hours and less pedestrian activity, such as banks, should be limited to enliven the pedestrian environment throughout the day. Parking requirements should be revised to encourage shared parking and a diversity of transportation choices (theme 7). Zoning in village centers should emphasize appropriate building form¹ and employ incentives to encourage preferred designs or uses. Where appropriate, the

¹ The form of a building is its size, shape, and location on the lot. 'Appropriate' forms would be those which fit within the context of the surrounding area and/or create the context for which we strive. This will be different for each unique area.

Zoning Map and Ordinance should be revised to incorporate specific base zones or overlay zones (themes 3 and 5). Form-based standards² (which focus on the building's shape, bulk, and design) can be complemented by revised sign standards and/or village-specific design guidelines. The allowed uses in commercial areas should be clarified, modernized, and presented in a clear table.

5. Create “soft transitions” between village centers and residential neighborhoods

Village centers have blended most successfully with surrounding neighborhoods where the commercial core has transitioned gradually to the residential neighborhoods that surround it. A soft transition often involves commercial buildings giving way to two-family or multi-family dwellings and offices with a residential character. A zoning reform effort should encourage the health of these soft transitions. Changes to the Zoning Map or the creation of new zoning districts and/or overlay districts would allow targeted zoning revisions to encourage moderate density mixed-use development in structures designed with a residential character.

6. Allow moderate, flexible growth on commercial corridors

Newton's commercial corridors, Needham Street, Washington Street, and Boylston Street (Route 9), are the main areas with the potential for new development or redevelopment. New development or redevelopment in these areas would help provide jobs and tax revenue to support the economic health of Newton as a whole. The *Comprehensive Plan* recommends moderate growth along these commercial corridors, concentrated near existing commercial centers and/or transit nodes.

Zoning reform should allow targeted increases in density to make new developments financially viable and create opportunities for business and job creation, while taking the development pressure off existing neighborhoods. Zoning regulations should also be flexible so that uses and structures may change through time without requiring a special permit for each new structure, alteration, or tenant (theme 2). Rezoning and development of these areas should incorporate a collaborative process for planning large-scale mixed-use development, as suggested recently by the Mayor's Mixed-Use Task Force in their proposed amendment to the *Comprehensive Plan* regarding mixed-use developments.

7. Rationalize and streamline parking regulations

Newton's parking regulations are commonly cited as the main hurdle to commercial development and new small businesses. Waiving required parking stalls triggers special permit review, which adds time and expense to the approval process. Parking requirements are important in order to ensure that adequate parking is provided to service our commercial centers. Yet many of Newton's village centers are walkable from surrounding neighborhoods and accessible by transit, so parking demand is less than for shopping centers only accessible by car.

Therefore, zoning reform should consider reducing required parking ratios, particularly for commercial and residential uses in village centers and allow easier use of shared parking arrangements. Reform should also consider allowing a payment in lieu of providing parking as a way of streamlining required parking waivers and raising revenue for municipal parking facilities. These zoning changes would need to be linked to non-zoning improvements in physical parking infrastructure including way-finding signage, demand-priced metering, and municipal parking garages or lots in high demand areas.

² Form-based standards emphasize how a building looks over how it is used. More specificity around building height, shape, location, and design is complemented by a predictable, by-right permitting process.

8. Protect neighborhood character and scale

Newton is also a City of many unique residential neighborhoods. In recent years, demand for large houses in the greater Boston area has led to a rapid rise in the number of new homes that are out of scale with their surrounding neighborhood. In response, residential FAR rules have been created and revised to limit the scale of new construction, while allowing existing houses room for modest additions. Zoning reform should seek to preserve the historic character and scale of Newton’s residential neighborhoods while allowing homeowners to make modest improvements without undue restrictions. In achieving this, reform could examine not only FAR, but also Newton’s old lot/new lot distinction, setbacks, allowed height/stories, frontage, lot size, and/or residential district mapping to ensure that each street or neighborhood is zoned appropriately to its character. In Historic Districts, defining appropriate design guidelines specifically crafted to neighborhoods or historic styles could also be useful in keeping the design of new development in character with existing neighborhoods.

9. Create more diverse housing opportunities

If Newton is to thrive and its social diversity is to be maintained, the City must have a diverse housing stock. Currently, large single-family homes predominate and the number of smaller homes is steadily decreasing through tear-downs and upgrades. This leaves few options for young singles and married couples beginning their careers seeking housing in Newton, and for empty-nesters who wish to downsize and stay in the community.

Newton's zoning should be systematically audited to identify barriers to and incentives for the creation of compatible housing on the low end of market rate. Such housing can be "naturally affordable" due to smaller unit sizes and higher density on the land. Residential zoning reform should eliminate unnecessary constraints upon the development of multifamily housing and the adaptive reuse of existing non-conforming structures, especially near transit nodes and in village centers and in their "soft transitions" (theme 5). Zoning should provide incentives for creative approaches that serve our housing needs, including accessory apartments, small multifamily dwellings, single-room occupancy units, two-family and three-family dwellings, and townhouses. Reform could also include a streamlined review process for small projects that meet affordable housing goals. Further improvements to inclusionary housing and accessory apartment rules should be made as well.

10. Institute a better process for managing change of religious and educational institutions

Newton is home to a number of institutions of primary, secondary, and higher education along with numerous religious and nonprofit institutions. MGL C.40A, Section 3 and the “Dover Amendment” place limits on the regulation of such uses through zoning. Zoning reform should seek to identify a better and more collaborative mechanism to manage institutional growth and change over time. The ZRG considered several possibilities including requiring regular updates of campus master plans prepared in collaboration with the community and the City’s Planning Department.

11. Improve natural resource conservation and sustainability

Newton is known as the “Garden City” and has a long tradition of public open space and natural resource conservation. Newton was recently recognized as a Massachusetts “Green Community” and seeks to become a more resource-efficient and sustainable City in the years to come. Zoning reform should encourage the preservation of open space, including golf courses, public parks, the Charles River waterfront,

revision, and discussion prior to adoption). The cost for this phase is estimated to be approximately \$40,000 to \$50,000. Significant staff time (approximately .5 Full-Time-Equivalents (FTE) total) will be required to manage the project, including coordinating with staff and the Board, organizing community meetings, and providing feedback on consultant work. In the process of addressing organizational changes, contradictions or confusing language may be uncovered which requires a minor policy decision to clarify. Reorganization would likely include a new digital format, which would expand the accessibility of the Ordinance over the web.

Simultaneous with the drafting and development of the Phase 1 amendment, the Planning Department, ZRG, and interested citizens would engage in coordinated community outreach around zoning reform. This public outreach will include education and community visioning and lay the ground for the larger policy decisions to take place in Phase 2.

2. COMPREHENSIVE REWRITE

Phase 2 involves a comprehensive re-write of Newton's Zoning Ordinance and Zoning Map in order to facilitate the goals articulated in the Themes section, above. The ZRG recommends investing in the services of a zoning consultant or consultant team to provide technical skills, specialized expertise, and labor to audit Newton's Zoning Ordinance, research alternatives, draft zoning code, create illustrations and tables, provide graphics, public outreach, and communications services, and support public hearings leading to the adoption of a new Zoning Ordinance. Based on the ZRG's research, this process will take approximately two and a half years (including a two stage FRQ/RFP consultant selection process, research and public outreach, drafting of revision and feedback, and discussion and public hearings prior to adoption). The cost for this phase is likely to be between \$200,000 and \$250,000 over three years (\$66,000-\$83,000 per year). A large amount staff time (an estimated 1.5 FTE total) should be devoted to managing the project, including but not limited to, coordinating with the consultant, staff, and the Board, organizing community meetings, and providing feedback on consultant work. City staff would function as a steering committee, providing project management and guidance. A citizen's committee could serve as a focus group and partner with staff and consultant to carefully review the work of the consultant.

3. ONE-YEAR REVIEW

After completing and adopting a new Zoning Ordinance, the ZRG recommends a one-year period of intensive review, including both data gathering and anecdotal experience with the new Ordinance. The Zoning and Planning Committee might use this time to work on long-term planning issues for Newton or issues that were set aside during Phase 2. At the end of this year, the Zoning and Planning Committee would review how the Ordinance is working and suggest any adjustments that are necessary in a coordinated fashion to preserve the clarity and consistency of the Ordinance.

The ZRG recommends that after this one-year review, the Zoning and Planning Committee take a similar, "scheduled maintenance" approach to future ordinance revisions. Under a scheduled maintenance approach, zoning changes would be actively considered throughout the year and organized into comprehensive packages of amendments to be voted on annually or biannually.

V. Writing an RFQ/RFP for Consulting Services

The Zoning Reform Group recommends that the City hire one or more planning consulting firms to assist in Phases 1 and 2 of the zoning reform process. The ZRG has studied the range of planning consultant services and considered RFPs used by other municipalities to hire consultants. In particular, the ZRG has noted the potential for consultant teams to provide a range of specialized services that can best compliment the City's resources with new capabilities (for example graphic design and scientific polling and surveying).

The ZRG recommends, as a first step, drafting a Request for Proposals (RFP) or a Request for Qualifications (RFQ) to hire a consulting firm to guide the Phase 1 reorganization. A second FRP or RFQ will be used to hire a consultant to draft the Phase 2 comprehensive re-write. The RFP presents a complete picture of the scope of work that the City wants to undertake and requires a more lengthy response. The RFQ asks for statements of interest, experience, qualifications, and design approach from a wider range of firms and involves shorter responses, which are often used to refine the search and offer a more focused second round RFP. The ZRG recommends employing an RFP for Phase 1, which has a narrower and clearly defined scope and a two-step RFQ and RFP process for Phase 2 to allow the consultants responses to help refine the ultimate RFP. The Director of the Planning and Development Department should direct the writing and review of RFPs/RFQs for consultants in consultation with the Board of Aldermen.

An RFQ or an RFP typically takes the following format:⁴

I. Introduction

- Brief community summary to help the respondent better understand the community where the work will take place including links to online resources
- Legal language relating to purchasing, contracts, human resources, etc.
- Goals and principles for the reform effort

II. Suggested scope of services

- Initial review and analysis/audit
- Public planning/design process
- Code drafting and integration
- Procedures for refining the draft
- Participation in the approval process
- List of final deliverables and timeline

III. Recommended format of submittals (with descriptions of the following)

- Written description of the consultants' approach to the project
- Expertise of the consultant team
- List of comparable projects undertaken by the consultants
- Copy of at least one code previously created and passed into law

IV. Evaluation procedure

- Rubric for how proposals will be judged

⁴ Compiled from RFP's from Hamden, CT, Amberglen, OR, Youngstown, OH, McHenry County, IL, and Sample RFQ from the Form-Based Code Institute

VI. Resources

The ZRG's recommended zoning reform approach would require the appropriation totaling between \$240,000 and \$300,000 over three to five years. This cost would be broken up into two main phases:

- Reorganization: Estimated cost \$40,000-\$50,000, paid over 4-6 months
- Comprehensive Reform: Estimated cost \$200,000-\$250,000, paid over three years

The Zoning Reform group recommends that the City provide the required funds for the Phase 1: Reorganization, while pursuing state and federal grants to support the Comprehensive Reform Phase starting in 2013. If grant funding cannot be secured, the ZRG urges the City to provide all the required funds as part of the Capital Improvement Program, as the ZRG firmly believes that zoning reform is too important to postpone.

Zoning guides changes in land use to the benefit or detriment of quality of life and the City's fiscal health. Zoning reform, even at \$200k-\$300k, will create substantial net benefits for the City, including more efficient use of staff time, increased permit fees from rejuvenating commercial areas, an expanded commercial tax base, and reduced costs of professional services for citizens seeking zoning interpretations or reviews.

Recent budget cuts at the state and federal level have reduced the availability of planning-related grant funding, even as the demand from local governments continues to rise. Only one grant program has the scale and scope to support the proposed reform: the HUD Community Challenge Grant. Applications for Community Challenge Grants are due in September each year. Only \$28 million was available in 2011 for this national program, which focuses on affordable housing, economic opportunity, and sustainability.

VII. Conclusions

Zoning reform is essential to our ability to achieve the Newton we want and should be undertaken immediately. The current Zoning Ordinance is over two decades old, difficult to use, and does not encourage development in line with the vision of the *Comprehensive Plan*. A revised Zoning Ordinance would be easier to use for professionals and citizens and better guide development in Newton to meet the challenges of 21st Century. A revised Zoning Ordinance can better protect what exists in some areas, while allowing other areas to renew the density and vitality of decades past.

The ZRG strongly recommends the above three-phase reform process. Initial success with re-organization will show that tangible change is possible and highlight the practical benefits of ordinance revision. Phase 2 will tackle the important policy decisions around use, density, and design that are necessary to achieving the goals of the *Comprehensive Plan*. Phase 3 will allow the City to carefully review the changes and ensure that amendments or modifications are seamlessly integrated into the new Zoning Ordinance.

Zoning reform requires an investment of capital and personnel, but the return on investment will be great. A reorganized, easier-to-interpret ordinance that better addresses the needs of modern homeowners and businesses will save significant Planning and ISD staff time, reduce the delays created by complex interpretations and reviews, lower the cost to citizens who hire attorneys to manage special permits, and encourage the economic development that Newton needs, while discouraging the development that Newton does not want. Change is certain. Through zoning reform Newton can guide it in a positive direction.

#295-11 JOYCE MOSS, 229 Franklin Street, Newton, re-appointed to the
PLANNING & DEVELOPMENT BOARD for a term of office to expire
February 1, 2014 (60 days 12/16/11). [10-11-11 @2:18PM]

ACTION: **HELD 7-0 (Shaprio not voting)**

NOTE: The committee voted unanimously to approve the re-appointment of Joyce
Moss without hesitation after re-reviewing her resume and being familiar with her and
her work on this commission and other boards and commissions.

Respectfully Submitted,

Marcia Johnson, Chairman